STATE OF SOUTH CAROLINA,
County of Charleston.

Before me personally appeared W. N. Royall, who being duly sworn says that he is superintendent of the Atlantic Coast Line Railroad Company; that the allegations of the foregoing petition are true of his own knowledge except as to matters stated therein on information and belief and as to those matters he believes them to be true.

W. N. ROYALL, Supt.

Sworn to before me this 2nd, day of October, A. D. 1901.

[SEAL.] W. HUGER FITZ SIMONS,
Notary Pub., S. C.

18 Order for Injunction.

Filed 2nd October, 1901.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

In re THOMAS E. B. PEGUES, a Citizen of Mississippi, Complainant,
vs.
R. I. HUMPHREYS, a Citizen of South Carolina, County Treasurer for Darlington County; John McCalla, a Citizen of South Carolina, Tax Collector for Chesterfield County, and The Cheraw and Darlington Railroad Company, a Citizen of South Carolina, Defendants.

Ex Parte: THE ATLANTIC COAST LINE RAILROAD COMPANY, a Citizen of Virginia,
versus
G. DUNCAN BELLINGER, Attorney General of the State of South Carolina; Stevenson and Matheson, J. M. Spears, S. W. G. Shipp, I. P. Mangum, County Treasurer for Chesterfield County, South Carolina; W. H. Lawrence, County Treasurer for Darlington County, South Carolina, and J. O. McLendon, County Treasurer for Florence County, South Carolina, All of said Persons Except the Atlantic Coast Line Railroad Company Being Citizens of the State of South Carolina.

On hearing the verified petition of the Atlantic Coast Line Railroad Company, on motion of J. T. Barron, with whom are Messrs. Theodore G. Barker and P. A. Willcox, attorneys for petitioner, it is

Ordered, that until the further order of this court G. Duncan
19 Bellinger, attorney general of the State of South Carolina, W. F. Stevenson and D. S. Matheson, J. M. Spears and S. W. G.

Shipp, plaintiff's attorneys be and they are hereby enjoined from prosecuting in the name of the State of South Carolina and as her attorney general and her attorneys an action for the recovery of the sum of money mentioned in the petition and demanded as taxes, or any part thereof, from the Atlantic Coast Line Railroad Company, and are enjoined from carrying on such action against said company, and against the property formerly of the Cheraw & Darlington Railroad Company in possession of the petitioner.

It is further ordered, that until the further order of this court, I. P. Mangum, county treasurer for Chesterfield county, South Carolina, be and is hereby enjoined from collecting the sum of ten thousand, four hundred and sixty one & 99/100 dollars, which is alleged he has heretofore demanded from the agent of the Atlantic Coast Line Railroad Company at Cheraw, South Carolina, and any fractional part of said sum from the Atlantic Coast Line Railroad Company.

It is further ordered, that until the further order of this court W. H. Lawrence, county treasurer for Darlington county, south Carolina, be and is hereby enjoined from collecting the sum of sixteen thousand, two hundred and fifty & 74/100 dollars, which it is alleged that he has heretofore demanded from the agent of the Atlantic Coast Line Railroad Company at Darlington, South Carolina, and any fractional part of the said sum, from the Atlantic Coast Line Railroad Company.

It is further ordered, that, until further order of this court J. O. McLendon, county treasurer for Florence county, South Carolina, be and he is hereby enjoined from collecting the sum of three thousand one hundred and sixty four & 84/100 dollars, which it is alleged — has heretofore demanded from the agent of the Atlantic Coast Line Railroad Company at Florence, and any fractional part of said sum, from the Atlantic Coast Line Railroad Company.

It is further ordered, that the said G. Duncan Bellinger, W. F. Stevenson, D. S. Matheson, J. M. Spears, S. W. G. Shipp and the said I. P. Mangum, the said W. H. Lawrence and the said J. O. McLendon do show cause before the circuit judge of this court at Charleston, S. C., on the 15th, day of October, A. D. 1901, at eleven o'clock forenoon, or as soon thereafter as counsel can be heard, why this injunction should not be made perpetual and that any return which may be made to this rule shall be served on the attorneys for petitioner not less than three days prior to said day.

It is further ordered that the petition herein be filed and a copy hereof served upon the respondents above named and that the petitioner do enter into bond to the clerk of this court in the sum of one thousand dollars in accordance with the rules of this court.

And lastly it is ordered, that *subpœna ad respondendum* do issue from the office of the clerk of the circuit court for the district of South Carolina to the above named G. Duncan Bellinger, W. F. Stevenson, D. S. Matheson, J. M. Spears, S. W. G. Shipp, I. P. Man-

gum, W. H. Lawrence, and J. O. McLendon, requiring each of them to appear before this court and to answer the petition herein filed.

CHARLES H. SIMONTON,
Circuit Judge.

2, October, 1901.

21 Return of W. H. Lawrence, County Treasurer.

Filed Jan. 19, 1903.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

In re THOMAS E. B. PEGUES, a Citizen of Mississippi, Complainant,
vs.
R. I. HUMPHREYS, a Citizen of South Carolina, County Treasurer for Darlington County; John McCalla, a Citizen of South Carolina, Tax Collector for Chesterfield County, and The Cheraw & Darlington Railroad Company, a Citizen of South Carolina, Defendants.

Ex Parte: THE ATLANTIC COAST LINE RAILROAD COMPANY, a Citizen of Virginia,
versus
G. DUNCAN BELLINGER, Attorney General of the State of South Carolina; Stevenson & Matheson, J. M. Spears, S. W. G. Shipp, I. P. Mangum, County Treasurer for Chesterfield, South Carolina; W. H. Lawrence, County Treasurer for Darlington County, South Carolina, and J. O. McLendon, County Treasurer for Florence County, South Carolina.

The respondents, W. H. Lawrence, as the treasurer of Darlington county, for a return to the rule herein served on him shows:

I. That he has discharged all the duties imposed on him by law, relative to the said back taxes, and has no further duty with regard to the same, and does not intend, nor has threatened to do any act, nor take any proceedings relative thereto.

II. He has not sufficient information to form a belief as to the allegations of the petition not herein admitted and hence —.

22 III. That the court has no jurisdiction of the cause against him, for the reason that he is acting merely as an official of the State, and has committed no wrong or trespass against the property of the petitioners, and does not contemplate any such wrong or trespass, and the action is really and in fact an action against the State of South Carolina, and the court has no jurisdiction thereof.

IV. He denies the conclusiveness of the judgment relied on against him, and alleges on the other hand that the same cannot be enforced in this way if it were conclusive on him.

Wherefore he prays that the rule as to him be discharged.

G. DUNCAN BELLINGER,
Attorney General.
STEVENSON & MATHESON,
J. M. SPEARS,
S. W. G. SHIPP,
Defendant's Attorneys.

23 Return of I. P. Mangum, County Treasurer.

Filed Jan. 19, 1903.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

In re THOMAS E. B. PEGUES, a Citizen of Mississippi, Complainant,
vs.
R. I. HUMPHREYS, a Citizen of South Carolina, County Treasurer for Darlington County; John McCalla, a Citizen of South Carolina, Tax Collector for Chesterfield County, and The Cheraw and Darlington Railroad Company, a Citizen of South Carolina, Defendants.

Ex Parte: THE ATLANTIC COAST LINE RAILROAD COMPANY, a Citizen of Virginia,
vs.
G. DUNCAN BELLINGER, Attorney General of the State of South Carolina; Stevenson & Matheson, J. M. Spears, S. W. G. Shipp, I. P. Mangum, County Treasurers for Chesterfield —, South Carolina; W. H. Lawrence, County Treasurer for Darlington County, South Carolina, and J. O. McLendon, County Treasurer for Florence County, South Carolina.

The respondent, I. P. Mangum, as the treasurer of Chesterfield county, for a return to the rule herein served upon him shows:

I. That he has discharged all the duties imposed upon him by law relative to the back taxes, and has no further duty with regard to the same, and does not intend, nor has threatened to do any act, nor to take any proceedings relative thereto.

II. He has not sufficient information to form a belief as to the allegations of the petition not herein admitted and hence de-
24 nies the same.

III. That the court has no jurisdiction of the cause against

him, for the reason that he is acting merely as the official of the State, and has committed no wrong or trespass against the property of the petitioners, and does not contemplate any such wrong or trespass, and the action is really and in fact an action against the State of South Carolina, and the court has no jurisdiction thereof.

IV. He denies the conclusiveness of the judgment relied on against him, and alleges on the other hand that the same cannot be enforced in this way if it were conclusive on him.

Wherefore he prays that the rule as to him be discharged.

G. DUNCAN BELLINGER,
Attorney General.
STEVENSON & MATHESON,
J. M. SPEARS,
S. W. G. SHIPP,
Defendant's Attorneys.

25 Return of J. O. McLendon, County Treasurer.

Filed Jan. 19, 1903.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

In re THOMAS E. B. PEGUES, a Citizen of Mississippi, Complainant,
vs.
R. I. HUMPHREYS, a Citizen of South Carolina, County Treasurer for Darlington County; John McCalla, a Citizen of South Carolina, Tax Collector for Chesterfield County, and The Cheraw & Darlington Railroad Company, a Citizen of South Carolina, Defendants.

Ex Parte: THE ATLANTIC COAST LINE RAILROAD COMPANY, a Citizen of Virginia,
versus
G. DUNCAN BELLINGER, Attorney General of the State of South Carolina; Stevenson & Matheson, J. M. Spears, S. W. G. Shipp, I. P. Mangum, County Treasurers for Chesterfield —, South Carolina; W. H. Lawrence, County Treasurer for Darlington County, South Carolina, and J. O. McLendon, County Treasurer for Florence County, South Carolina.

The respondent, J. O. McLendon, as the treasurer of Florence county, for a return to the rule herein served upon him shows:

I. That he has discharged all the duties imposed on him by law relative to the back taxes, and has no further duty with regard to

the same, and does not intend, nor has threatened to do any act, nor to take any proceedings relative thereto.

II. He has not sufficient information to form a belief as to the allegations of the petition not herein admitted and hence denies the same.

26 III. That the court has no jurisdiction of the cause against him, for the reason that he is acting merely as an official of the State, and has committed no wrong or trespass against the property of the petitioners, and does not contemplate any such wrong or trespass, and the action is really and in fact an action against the State of South Carolina, and the court has no jurisdiction thereof.

IV. He denies the conclusiveness of the judgment relied on against him, and alleges on the other hand that the same cannot be enforced in this way if it were conclusive on him.

Wherefore he prays that the rule as to him be discharged.

G. DUNCAN BELLINGER,
Attorney General.
STEVENSON & MATHESON,
J. M. SPEARS,
S. W. G. SHIPP,
Defendant's Attorneys.

27 Return of G. Duncan Bellinger, Attorney General of the State of South Carolina; Stevenson & Matheson, S. W. G. Shipp, and J. M. Spears.

Filed Jan. 19, 1903.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

In re THOMAS E. B. PEGUES, a Citizen of Mississippi, Complainant,
vs.
R. J. HUMPHREYS, a Citizen of South Carolina, County Treasurer for Darlington County; J. M. McCalla, a Citizen of South Carolina, Tax Collector for Chesterfield County, and The Cheraw and Darlington Railroad Company, a Citizen of South Carolina, Defendants.

Ex Parte: ATLANTIC COAST LINE RAILROAD COMPANY, &c.,
vs.
G. DUNCAN BELLINGER, Attorney General of the State of South Carolina, &c.

The respondents, G. Duncan Bellinger, attorney general of the State of South Carolina, Stevenson & Matheson, S. W. G. Shipp,

J. M. Spears, to the rule above and for the cause and for answer to the petition served on them, reserving to themselves all advantage of exception to said petition which may be taken to its manifold uncertainties and insufficiencies jointly and severally show:—

I. That this court has no jurisdiction to proceed against them in this cause for the reason that they are acting purely as agents for the State in whose interest and name the action sought to be stopped is being pros ated—and are proceeding in a judicial proceeding to test the right of the State to collect taxes set forth, and they do not contemplate or threaten any interference with the proper rights or franchises of the Atlantic Coast Line Railroad
28 Company until it has been decided by courts of competent jurisdiction that they are liable for taxes and the petitioner can have settled in the courts of last resort in such proceedings. That these respondents have no personal interest in the suit but are acting by virtue of the right of the State and their duty to her as attorney general and counsel employed by the State, and they submit that this is an action or proceeding in fact against the State of South Carolina and the court is without jurisdiction to hear or determine the same.

II. They further show that the State of South Carolina was neither party or privy to the case of Pegues against Humphreys and which is now attempted to be enforced against her and she is not bound by any judgments rendered in said cause, nor by any judgment against any of her officials nor is she estopped by any acts, omissions or neglects of any of her officials relative to the said matter and neither she nor her attorneys acting for her are bound in any way by the alleged judgment or any proceedings relating thereto, nor can they be made applicable to either the said State or her attorneys in the way here contemplated.

III. That the allegation of the petition that there is a contract between the said State and the Cheraw & Darlington Railroad Company is untrue and it was on the admission of that fact that the decree in the above case was based, said fact being alleged in the original complaint herein based on the allegation that the Cheraw & Darlington Railroad Company did not build its road until after the act of December 17th, 1863, and therefore the building of said road was the consideration for the alleged exemption and made the same a contract, and the fact was conceded by the defendants Humphreys and McCalla and the judgment that it was a contract irrepealable was based on that admission whereas the road was completed in 1855, as shown by the stipulation of Mr. J. T. Barron, counsel for said road, hereto attached, and marked Exhibit "A," and the State seeks in the case it has instituted against the petitioner in the State court to make that question which has not heretofore been
29 made and the said question is not *res judicata* and she has the right to have that question settled and these respondents allege that the said alleged exemption was a mere gratuity if anything and was repealed by the constitution of 1868, and to enjoin these re-

spondents from prosecuting said action will, in effect, enjoin the State and they make the said question here also, and deny that the decree relied upon herein is final as to such question — is binding upon them.

IV. They allege further that the words used, to wit: "rights, powers and privileges" in the act of December 17th, 1863, would not confer the right to exemption from taxation possessed by the Northwestern Railroad Company upon the Cheraw & Darlington Railroad Company but it would require some clear, definite expression evincing clearly the intention to part with the right to tax before it would be held to exempt the Cheraw & Darlington Railroad Company from taxation and no such question was made and litigated by the defendants in the above case, but, on the contrary, it was conceded that the word "privilege" would confer an exemption and the State by her attorneys has the right to have that question litigated and to enjoin them herein from prosecuting the State's action to test the same will enjoin the State itself from having the matter heard and settled in courts of competent jurisdiction.

V. That there is plain and adequate remedy at law and there is no ground for the interference of the court of equity.

VI. They deny on information and belief that petitioner is a resident or citizen of the State of Virginia, but allege on the other hand that it is a corporation created under and by virtue of the laws of the State of South Carolina and they have not sufficient information to form a belief as to whether it owns all the stock and assets of the Cheraw & Darlington Railroad Company, and they deny the same, and they further deny that the bill of complaint in the original cause prayed an injunction against all the officers of the State of South Carolina who were charged with the collection of taxes but alleged that it asked and obtained an injunction against the treasurer of Darlington county and tax collector of Chesterfield
30 county only and restrained them from issuing execution and selling the property of the company.

VII. They deny that the State of South Carolina has ever acquiesced in the exemption claimed by said company, but they admit that for many years her officers failed to collect the same and that a suit brought in the State court failed for the reason that they had not been assessed and placed on the books.

VIII. They deny that the State board of railroad assessors was served with the decree in this cause or that they gave a retroactive effect to the statute of 1900, or that they were in contempt in making their assessment and allege on the other hand that they were acting as State officers and it was the State acting through them and the State was neither a party to nor bound by the judgment in the above case, but it was *res inter alios acta*.

IX. They admit that the lien of said taxes is upon petitioner's property but deny that it is a cloud thereon but allege that it is a just and valid debt due the State and she has directed these respondents to bring suit to recover the same and as her attorneys they are

South Carolina, at Charleston, S. C., on the 15th, day of October, 1901, after the service thereof; then and there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the petition of Atlantic Coast Line Railroad Company, a citizen of the State of Virginia, *In re* Thomas E. B. Pegues, complainant, against R. I. Humphreys, and others, defendants.

And also, that you do, on the rules day next immediately after the day appointed and expressed, file, or cause to be filed, in the registry of said court, your plea, answer or demurrer, to the said bill of complaint.

Hereof fail not under the pain of one hundred pounds.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, at Charleston, in South Carolina district, aforesaid, the 2nd, day of October in the year of our Lord one thousand nine hundred and one, and in the one hundred and twenty sixth year of the sovereignty and Independence of the United States of America.

9 Marshal's Return of Service.

The returns of the marshal show that copies of the petition, *subpœna ad re.* and the order of injunction were served personally upon each of the respondents therein named.

10 Petition of the Atlantic Coast Line Railroad Company.

Filed 2nd October, 1901.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

In re THOMAS E. B. PEGUES, a Citizen of Mississippi, Complainant,
vs.
R. I. HUMPHREYS, a Citizen of South Carolina, County Treasurer for Darlington County; John McCalla, a Citizen of South Carolina, Tax Collector for Chesterfield County, and The Cheraw and Darlington Railroad Company, a Citizen of South Carolina, Defendants.

Ex Parte: THE ATLANTIC COAST LINE RAILROAD COMPANY, a Citizen of Virginia,
versus
G. DUNCAN BELLINGER, Attorney General of the State of South Carolina; Stevenson & Matheson, J. M. Spears, S. W. G. Shipp, I. P. Mangum, County Treasurer for Chesterfield County, South Carolina; W. H. Lawrence, County Treasurer for Darlington County, South Carolina, and J. O. McLendon, County Treasurer for Florence County, South Carolina, All of said Persons Except the Atlantic Coast Line Railroad Company Being Citizens of the State of South Carolina.

To the honorable the judges of the said circuit court:

The petition of the Atlantic Coast Line Railroad Company, a citizen of Virginia, respectfully shows:

First. That it is a body politic and corporate created by the laws of the State of Virginia as the Atlantic Coast Line Railroad
11 Company of Virginia, and a citizen of said State, since then consolidated under the laws of Virginia, of North Carolina, and of South Carolina with railroads in those States and now known as, and doing business under the name of, the Atlantic Coast Line Railroad Company.

Second. That as such company it is the purchaser and legal owner of the railroad in South Carolina extending from Florence in the county of Florence, (formerly a part of the county of Darlington) to Cheraw, in the county of Chesterfield, in said State, of all the other property and assets which were of the Cheraw and Darlington Railroad Company of South Carolina remaining in the possession of said company on the 18th. day of July, 1898—except such as has since that date ceased to exist, of the stock of said company, and of

all the rights, privileges and franchises to which said Cheraw and Darlington Railroad Company had theretofore been and was entitled.

Third. That the title of your petitioner to said property and stock is derived through several intermediate ownerships and transfers from the persons and corporations who were in the year 1870 the owners of shares of the stock of the Cheraw and Darlington Railroad Company, including the twenty-nine shares of said stock which was then owned by Thomas E. B. Pegues, a citizen of the State of Mississippi, who was the complainant in the above named suit in equity, and who in said year brought his bill of complaint in behalf of himself, and for the protection of the property of the Cheraw and Darlington Railroad Company and its owners and of all the stockholders and creditors of said company.

Fourth. That the record of this court in above entitled suit shows, that the bill of complaint asserted, on behalf of the Cheraw and Darlington Railroad Company and its stockholders, that the property of said company was exempt, by virtue of its amended charter, from all taxation by the State, and prayed an injunction against the officers of the State of South Carolina who were charged with
the collection of taxes, restraining them from enforcing the
12 collection of taxes levied in the name of the State upon the
property of the Cheraw and Darlington Railroad Company; that the contract right of said company to said exemption was determined in said suit, and that an order for a writ of injunction was granted by the circuit court for the district of South Carolina and affirmed on appeal by the Supreme Court of the United States, which injunction was by order of said courts made perpetual.

Fifth. That the State of South Carolina acquiesced in said right of exemption so adjudged to belong to the Cheraw and Darlington Railroad Company and to its stockholders, from the year 1872, when the decision of said supreme court was rendered and when its mandate was issued, down to the year 1897, when its then attorney general attempted without success to enforce by an action the collection from said company of certain alleged unpaid taxes claimed by him to be due to the State, for twenty years then preceding.

Sixth. That on the nineteenth day of February, A. D. 1900, and act of the assembly of the State of South Carolina was approved, entitled "An act to provide for the assessment for taxation of railroad property which has been off the tax books for the years in which they have been off the books, and to fix the time when such taxes shall become due, and for the collection thereof," which act is as follows:

SECTION 1. Be it enacted by the General Assembly of the State of South Carolina, That when railroad property has not been returned nor assessed for any year, and no taxes were paid thereon, and more than a year has elapsed since taxes for such years, if assessed at the proper time, would have been due, the said taxes shall be assessed by the railroad board of assessors, which shall be convened in extra

session by the secretary of state for such purpose, on the petition of any county supervisor in whose county any part of such railway may lie.

SECTION 2. That such board shall fix the value of said road for each year in which it shall appear that said road has been off the books, separately, and its valuation, and this, with the number of miles in each county, shall be certified to the respective county auditors, as the valuation of railroad property is done when regularly returned and assessed.

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SEC. 3. That said auditor shall enter the said assessment each year separately in the tax books in his office for the respective years, and charge the taxes on said assessment under the levies for those years, *and* if they had been assessed and levied at the usual time; and he shall furnish a certified statement to the county treasurer, showing the property taxed, the value of the same, and the amount due for each year separately.

SEC. 4. That the treasurer shall immediately demand the said taxes of the company in default, or, if he find the property in control of another company, demand shall be made of the company which he finds in the possession of the property.

SEC. 5. That said taxes shall become due as soon as said demand is made, and, if they are not paid within sixty days from the demands made, there may be an action brought in the name of the State by the attorney general, and such counsel as the counties interested may employ, against the company in default, and any company which may be in possession of the property which has escaped taxation, for the recovery of said taxes; and suit may be brought for each year separately or for all the years consolidated.

SEC. 6. The assessment herein provided for shall be limited to the period of ten years immediately preceding the restoration of said railroad property to the tax books, and no recovery shall be had hereunder for a longer period than ten years.

SEC. 7. The provisions of this act shall not apply to any railroad property which may be hereafter adjudged by the courts to be exempt by law from the taxes which may be assessed against it under this act.

SEC. 8. That nothing herein contained shall be construed to impair in any way the right of the State, or any of its officers or agencies, to collect such taxes in any other method provided by law.

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Approved the 19th day of February, A. D. 1900.

Seventh. Your petitioner is informed and believes that E. T. King, county supervisor for the county of Chesterfield, has lately presented to the railroad board of assessors of the State of South Carolina, of which the attorney general of the said State is a member and legal adviser, *ex officio*, his petition praying that said board be convened in extra session and that taxes may be assessed upon the property known as the Cheraw and Darlington railroad for the years prior to the year 1899; that said board has, against the protest of your

petitioner, construed said act of assembly retroactively as applicable to the non-taxable property of your petitioner, (which was the property of the Cheraw and Darlington Railroad Company) and has treated said property as liable to be now assessed for the taxes of the several years which *has* passed, viz: the fiscal years covering periods denominated by the years 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, notwithstanding its said exemption and has disregarded the judgment of this honorable court and of the Supreme Court of the United States and has proceeded upon said petition to assess the property of your petitioner after notice of said orders of injunction (copies of which were served upon said board) and in contempt of the authority of said supreme and circuit courts of the United States of America.

Eighth. Your petitioner is further informed and believes it to be true that said board has certified its valuation of said property for each of the years above named, together with the number of miles in each county to the respective county auditors of Chesterfield, Darlington, and Florence counties.

Ninth. Your petitioner is also informed and believes it to be true that the said auditors respectively, viz: E. F. Malloy, county auditor for Chesterfield county; J. P. Mozingo, county auditor for Darlington county, and J. S. Hutchinson, county auditor for Florence county, have each entered assessments for each year separately in the tax books of his office for the respective years and have charged the taxes on said assessments under the levies for those years as
15 if they had been assessed and levied at the usual time, and that they have furnished to the respective county treasurers of their respective counties a certified statement showing the property taxed, the value of the same, and the amount now assumed to be due for each year separately, according to the terms of said act.

Tenth. That, by the statutes of said State, all taxes legally assessed are declared to be a debt due to the State by the parties against whom the same shall be charged and shall be a lien upon the property of the tax debtor; and the entry of the taxes above mentioned upon the tax books of said counties respectively has recorded an intended encumbrance upon the property of your petitioner and cast a cloud upon its title, greatly to the injury of your petitioner's credit and to the interest of its stockholders.

Eleventh. That your petitioner is entitled in the law to all the rights to which the stockholders of the Cheraw and Darlington Railroad Company, in said suit of Thomas E. B. Pegues, above mentioned, were adjudged to be entitled, and is entitled to the exemption of its property from all taxation, as adjudged by said court and to the benefit and protection of the decrees of said courts and the orders of injunction issued therein.

Twelfth. Your petitioner is informed further that the county treasurer of Chesterfield county, I. P. Mangum; the county treasurer for Darlington county, W. H. Lawrence, and the county treasurer for Florence county, J. O. McLendon, have each received from

the county auditors of their respective counties above named certified statements of sums so charged as taxes by the said county auditors on the tax books and have demanded payment each of the several amounts so certified respectively (being ten thousand four hundred and sixty-one & 99 / 100 dollars for Chesterfield county, sixteen thousand two hundred and fifty & 74 / 100 dollars for Darlington county, and three thousand one hundred and sixty-four & 84 / 100 dollars for Florence county); the total amount so claimed and demanded by said tax officials in the name of the State of South Carolina
16 being the sum of twenty-nine thousand eight hundred and seventy-seven & 57 / 100 dollars.

Thirteenth. Your petitioner has refused to pay the taxes so charged against it and so demanded, being advised that the same are wholly illegal and unjust. That said assessment, levy and demand made and action brought under said act violate the obligation of the contract made between the State of South Carolina and the Cheraw and Darlington Railroad Company.

Fourteenth. That the attorney-general of the State, the Honorable G. Duncan Bellinger, and Stevenson & Matheson, J. M. Spears, and S. W. G. Shipp, plaintiff's attorneys, have commenced a proceeding purporting to be under said act of assembly above set forth, an action in the name of the State against you- petitioner as the company found to be in possession of the property formerly owned by the Cheraw and Darlington Railroad Company, for the recovery of said taxes.

Fifteenth. Your petitioner therefore prays that it may be allowed the benefit and protection of said decrees of this honorable court and of said *Du*preme Court of the United States in said suit made, and due process to enforce obedience to the decrees of this court of 1870 and 1872 above referred to, against the above named county treasurers as the present tax officials of said State, and the said G. Duncan Bellinger, attorney general, and the said Stevenson & Matheson, J. M. Spears, and S. W. G. Shipp, plaintiff's attorneys, requiring each of them to answer this petition, and that it may have a writ of injunction issued from this court restraining the said officials and also the said attorney general and the said Stevenson & Matheson, J. M. Spears, and S. W. G. Shipp, plaintiff's attorneys, from proceeding under said act of the assembly and from prosecuting an action in the name of the State against your petitioner for the recovery of said amounts claimed as taxes, and against each of the above named county treasurers enjoining and restraining them and each of
17 them, and any and all other persons acting for or in the name of said State, from collecting all such amounts so claimed as taxes, and any other amounts which may be claimed as taxes in any method provided by law for the collection of taxes legally imposed.

J. T. BARRON, with whom are
THEODORE G. BARKER,
P. A. WILLCOX,
Attorneys for Petitioner.

39 Notice of Hearing Before the Honorable Nathan Goff, Circuit Judge.

Filed Jan. 19, 1903.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

In re THOMAS E. B. PEGUES, a Citizen of Mississippi, Complainant,
vs.
R. I. HUMPHREYS, a Citizen of South Carolina, County Treasurer for Darlington County; John McCalla, a Citizen of South Carolina, Tax Collector for Chesterfield County, and The Cheraw and Darlington Railroad Company, a Citizen of South Carolina, Defendants.

Ex Parte: THE ATLANTIC COAST LINE RAILROAD COMPANY, a Citizen of Virginia,
versus
G. DUNCAN BELLINGER, Attorney General of the State of South Carolina; Stevenson & Matheson, J. M. Spears, S. W. G. Shipp, J. P. Mangum, County Treasurer for Chesterfield County, South Carolina; W. H. Lawrence, County Treasurer for Darlington County, South Carolina, and J. O. McLendon, County Treasurer for Florence County, South Carolina, All of said Persons Except the Atlantic Coast Line Railroad Company Being Citizens of the State of South Carolina.

Take notice, that on Monday, the 18th day of November, 1901, at 11 o'clock a. m., or as soon thereafter as counsel can be heard, the matters arising on the rule to show cause herein, postponed by order of his honor Charles H. Simonton, circuit judge, for reasons stated in his order of date October 25th, 1901, will be called for hearing before his honor Nathan Goff, circuit judge, at his chambers in the city of Richmond, State of Virginia, 26th day of October,
40 1901.

J. T. BARRON,
THEODORE G. BARKER,
P. A. WILLCOX,
Counsel for Petitioner.

To G. Duncan Bellinger, attorney general, Stevenson & Matheson, J. M. Spears, and S. W. G. Shipp, counsel for defendants, respondents.

41 Statement as to Admission of Facts and Evidence at Hearing.

Filed Jan. 19, 1903.

At the hearing of the cause the affidavit of W. F. Stevenson, Esq., was submitted by the respondents, to the following effect: * * * That the consolidation of the Cheraw & Darlington Railroad Company into the A. C. L. Railroad Company of S. C. under the act of 1897, 22 Statutes at Large of S. C., page 635, on the 18th day of July, 1898. Of this affidavit no copy was kept and it has been lost with the other original papers. The petitioner offered in evidence its chain of title to the property and stock of the Cheraw and Darlington Railroad Company, including the stock once held by Thomas E. B. Pegues which showed that the petitioner was now the owner of that stock and of all other stock, property and assets of the Cheraw & Darlington railroad as alleged in the petition. The petitioner also offered in evidence the reports of D. H. Chamberlain, and of Samuel W. Melton, as attorney general, as to the case of Pegues *vs.* Humphreys, and the action of the legislature of South Carolina thereon.

42 Extracts from Senate Journal, Session of 1874, Monday, January 26, 1874.

Filed Jan. 19, 1904.

The senate assembled at 12 m., and was called to order by the president.

The roll was called, and, a quorum answering to their names, the president announced the senate ready to proceed with business.

On motion of Mr. J. M. Smith, the reading of the journal of Saturday was dispensed with.

Communication from the Attorney General.

The president laid before the senate the following communication:

To the Honorable R. H. Gleaves, president of the senate.

SIR: I beg leave respectfully to submit herewith the annual report of the attorney general to the General Assembly, and have the honor to be,

Very respectfully, your obedient servant,

SAM'L W. MELTON,
Attorney General.

Annual Report.

STATE OF SOUTH CAROLINA,
OFFICE OF THE ATTORNEY GENERAL,
COLUMBIA, December 1st, 1873.

To the honorable the General Assembly of the State of South Carolina:

In accordance with the requirement of section 31, chapter XVI, General Statutes, I respectfully submit a report of the "cases argued, tried or conducted by the attorney general in the supreme court and circuit courts during the past year, with such other information in relation to the criminal laws and such observations and statements, as, in my opinion, the criminal jurisdiction and the proper and economical administration of the criminal law warrant and require."

43 This concludes my report of the cases argued, tried or conducted by the attorney general in the supreme court and circuit courts of the State. During the year several cases, involving issues of vast importance to the State, have been heard in the Supreme Court of the United States, a report of which would, doubtless, be acceptable to the General Assembly. Before that tribunal, the attorney general of the State is not required by law to appear, nor can he so do with due regard to other duties; and it has been the custom in such cases, where matters of the gravest moment to the State are finally determined, to retain counsel learned in the law and of experience in that court. This I had not been authorized to do by the General Assembly, and no fund for that purpose had been placed at the disposal of my office; whilst the civil contingent fund, to which I had looked for this purpose, proved to be unavailable. In this contingency, my predecessor, Hon. D. H. Chamberlain, who had conducted the cases below, and was fully possessed of them, consented, upon my own solicitation and that of the governor, to appear in behalf of the State, and, without the usual advantage of associate counsel in Washington, conducted the several arguments with eminent ability and success. I have respectfully to ask that the General Assembly will approve my action, and recognize these services by a suitable and adequate appropriation.

Reuben Tomlinson, *et al.*, appellants *vs.* Thomas Branch, *et al.* appellees. This case involved the right of the State to tax the property of the South Carolina Railroad Company, and was first heard and decided adversely to the State in the circuit court of the United States at Charleston, in April, in 1870. An appeal was taken by my predecessor to the Supreme Court of the United States, where the case was argued in March 1873. The decision of the court, according to my construction, establishes the right of the State to tax all the line, and property pertaining thereto, held under the charter of the original "South Carolina Canal and Railroad Com-

pany," including the whole line from Charleston to Hamburg.
44 The line and property from Branchville to Columbia, and from Kingville to Camden, is held to be exempt from taxation by the State.

The decision directed the circuit court to make a proper division of the property of the company common to these lines and to apportion the same between the taxable and non-taxable portions of the company's road. At the April term of the court in Charleston, a referee was appointed to inquire and report upon the matters in controversy, pending which the injunction against the collection of taxes from the company is continued. It has thus far been impracticable to procure the necessary data for the hearing before the referee; but I expect to be able to present the report in time for a hearing at the ensuing April term. The only serious point yet in controversy is in the claim of the company to have the line and property of the road between Charleston and Branchville included in the property to be apportioned, whilst we claim that this line and property are to be wholly included in the taxable portion. It would seem to be impossible to distort the text of the decision so as to sustain this position of the company, and I cannot but think that the position is taken merely to postpone the day of payment. I must, nevertheless, regard it as a possible contingency that the case must again be carried to the Supreme Court of the United States. The amount involved to this State, roughly estimated, will not fall short of two hundred thousand dollars.

Reuben Tomlinson, *et al.*, appellants *versus* Morris K. Jessup, appellee. This case involved the right of the State to tax the property of the Northeastern Railroad Company, and arose in the same manner, and was argued at the same time in the Supreme Court of the United States with the case of the South Carolina Railroad Company. The decision of the court affirms, beyond controversy, the rigut of the State to tax the property of the company, and I have been informed that satisfactory arrangements have been perfected with the comptroller general for a settlement of the delinquent taxes due by this company to the State.

45 R. J. Humphreys, *et al.* appellants *vs.* Thomas E. B. Pegues, appellee. The same questions, involving the right of the State to tax the property of the Cheraw and Darlington Railroad Company, were presented in this case, which was argued in the Supreme Court of the United States at the same time with the two cases last preceding. The decision of the court holds that this company is exempt from taxation under the terms of the charter.

* * * * * * *

On motion of Mr. Swails the report was received as information, and ordered to be entered on the journal.

* * * * * * *

Extracts from House Journal, Session of 1874, Monday, January 26, 1874.

Filed Jan. 19, 1903.

Pursuant to adjournment, the house met at 12 m.
The speaker took the chair.
The roll was called, and a quorum announced.
Prayer by Rev. E. Hayes.
The journal of Saturday was read and confirmed.

Bills and Resolutions.

The speaker laid before the house the report of Hon. S. W. Melton, attorney general.
Referred to the committee on the judiciary.

46 Affidavit of James Norton.

Filed Jan. 19, 1903.

STATE OF SOUTH CAROLINA, }
County of Marion. }

Personally comes James Norton, who being duly sworn says: That during the years 1891–94, he was chief clerk in the office of comptroller general of the State of South Carolina and the clerk of the State board of railroad assessors; that when the other railroad companies filed returns of their property for taxation, the Cheraw & Darlington railroad did not do so, and when the matter was called to the attention of that company, the representatives thereof claimed that its property was exempt from taxation. That thereupon the matter was referred to the then attorney general of the State of South Carolina, who was a member of the State board of railroad assessors, and who there replied that the property of said company was exempt from taxation, and that it had been so decided by the Supreme Court of the United States, the opinion of the attorney general being given to said board in session as a member and advisor thereof, and that thereafter during the years that deponent was chief clerk, as aforesaid, and during the years that deponent was comptroller general of the State of South Carolina, no further attempt was made by the tax department of the State to tax the property of said company, and the exemption of same from taxation was acquiesced in by said department, upon the oral advice of each succeeding attorney general to the respective succeeding board of assessors.

JAMES NORTON.

Sworn to before me this 13th, day of November, 1901.
GEO. R. REAVES, [L. S.]
Notary Public.

47

Affidavit of J. T. Barron.

Filed Jan. 19, 1903.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

In re THOMAS E. B. PEGUES, a Citizen of Mississippi,
vs.
R. J. HUMPHREYS, a Citizen of South Carolina, &c., ET AL.

Ex Parte: THE ATLANTIC COAST LINE RAILROAD COMPANY, a Citizen of Virginia,
versus
G. DUNCAN BELLINGER, &C., ET AL.

STATE OF SOUTH CAROLINA,
County of Richland.

Personally comes J. T. Barron, who being duly sworn, says: That he was counsel for the late Cheraw & Darlington Company during the years for which taxes are now claimed by the treasurers of Chesterfield, Darlington and Florence counties, and is one of the counsel of the Atlantic Coast Line Railroad Company in this matter; that deponent, together with Major Theo. G. Barker, appeared before the State railroad board of assessors at the extra session thereof in the year 1900, called for the purpose of assessing the value of the Cheraw & Darlington Railroad Company's property, at the instance of E. T. King, county supervisor of Chesterfield county, when deponent and Major Barker protested against the proceeding and filed a written objection thereto, a copy of which is herewith filed and styled "Plea of the Atlantic Coast Line Railroad Company," and that the said Major Theo. G. Barker then and there exhibited and read to the said board certified copies of the orders or decrees of in-

48 junction, in the case of Pegues *vs.* Humphreys, of date 27th, April and 10th, July, 1871; and also the mandate of the supreme court in the said case, made at the term of said court on the first Monday of December, 1872, and dated the 10th of March, 1873.

J. T. BARRON.

Sworn to before me this 16th, day of November, 1901.

JOHN J. EARLE, [L. S.]
Notary Public for South Carolina.

49 Copy Original Record in Cause Including Bill for Injunction and Relief.

Filed Jan. 19, 1903.

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

To the honorable the judges of the fourth circuit of the United States:

The bill of complaint of Thomas E. B. Pegues, a citizen of Mississippi, against the Cheraw and Darlington Rail Road Company, a corporation under act of the General Assembly of the State of South Carolina, and doing business in said State, R. I. Humphreys a citizen of South Carolina and county treasurer for the county of Darlington, and John McCalla a citizen of South Carolina, county treasurer for the county of Chesterfield in the State of South Carolina, showeth unto your honors, that:

1. Your orator is the *bona fide* holder of twenty nine shares of the capital stock of The Cheraw and Darlington Rail Road Company, one of the defendants, and has been a stockholder therein since the organization of the company.

That the said Cheraw and Darlington Rail Road Company is a body corporate by an act of the General Assembly of the State of South Carolina passed the nineteenth day of December in the year of our Lord eighteen hundred and forty nine. That before the construction of said rail road under its charter by an act of the General Assembly of South Carolina passed the seventeenth day of December in the year of our Lord one thousand eight hundred and sixty three, section five of the above first named act was amended "so as to read as follows, to wit: That all the powers, rights and privileges granted by the charter of the North Eastern Rail Road Company are hereby granted to the Cheraw and Darlington Rail Road Company, and subject to the conditions therein contained except
50 as to the amount of capital stock, and except in so far as the special provisions of this act may otherwise require the same to be modified or varified."

It was also provided in said act of assembly (A. D. 1863 sec. III) "that this charter shall in no wise be subject to the provisions of the forty first section of the act of the General Assembly of South Carolina passed on the seventeenth day of December in the year of our Lord one thousand eight hundred and forty one."

The charter of the North Eastern Rail Road Company referred to in said act, is contained in an act of the General Assembly of the State of South Carolina passed the sixteenth day of December A. D. 1851, entitled "An act to incorporate the North Eastern Rail Road

Company," which was subsequently amended by an act of the General Assembly passed the nineteenth day of December A. D. 1855, entitled "An act to amend the charter of the North Eastern Rail Road Company and for other purposes." By the terms of the amended charter of the North Eastern Rail Road Company A. D. 1855, it was declared "Sec. L. That the stock of the North Eastern Rail Road Company and the real estate that it now owns or may hereafter acquire which is connected with or subservient to the works authorized in the charter of the said company shall be and the same is hereby exempted from all taxation during the continuance of the present charter of the said company."

2. Your orator is advised that the exemption from taxation granted by the State of South Carolina to the North Eastern Rail Road Company by amendment of its charter in 1855, constitutes a part of the powers, rights and privileges, secured to the Cheraw and Darlington Rail Road Company by the above recited act of assembly A. D. 1863, and the acceptance thereof by the stockholders of the Cheraw and Darlington Rail Road Company constitutes a contract between the State of South Carolina and the stockholders of said company.

3. Your orator further shows unto your honors, that said
51 amendment of the charter of the said company, passed in 1863, was accepted by the company, which has been doing business thereunder since its organization.

That out of said contract certain legal rights arose and have become vested in said company so incorporated and under it, in the creditors of said company and in divers other persons, who have dealt with the said company upon the faith of its chartered rights, pribileges and exemptions.

4. That your orator became a purchaser of the shares in the capital stock of said corporation and outlayed large sums of money in acquiring the rights of a shareholder therein and claims the protection of the unimpaired obligations of the contract of said State with the company.

5. That the said company has fulfilled all of the requirements of its charter and is well entitled to protection in all the rights privileges and exemptions which belong to it under its contract with the State.

6. That by an act of the General Assembly of the State of South Carolina, passed at a special session in the year 1868, entitled: "An act providing for the assessment and taxation of property" it was declared.

"(SEC. II.) The president and secretary of every rail road company whose track or road-bed, or any part thereof, is in this State, shall annually, between the first day of September and twentieth of October, return to the auditor of State under their oaths, the total length of said road, the total length of said road in this State, and the length thereof in each county, township, city and incorporated village in this State; the total length of their double track in this State, and the length thereof in each county, township, city and in-

corporated village of this State; the total length of all their side tracks and the length thereof in each city, county, township and incorporated village in this State; the location and value of all
52 their shops, depots, grounds, station houses, wood and water stations, buildings, stationary engines, tools, implements and fixtures in South Carolina, and all other real estate necessary to the daily running operations of the road; the number and value each of all their locomotive engines, passenger, freight, platform, gravel, construction, hand and other cars, the value of their moneys and credits, the total value of the entire road, appurtenances and equipments, and the total value of said road in South Carolina with its appurtenances and equipments.

(SEC. 12.) The president and secretary of every rail road company mentioned in the preceding section, shall also, annually, between the first of September and the twentieth of October, return to the county auditor of each county in South Carolina, through or into which such road, or any part thereof, may be located, a statement of the value of said road, and the property of the company in said county, and in each of the townships, cities and villages of said county, through or into which said road, or part thereof, is located, in the manner and form required by this act, in the return to the auditor of State.

(SEC. 13.) In ascertaining the value of the road and property of any railroad company, the value of the right of way, bed and track of the whole road, shall be fixed, and such value apportioned pro rata to each mile of the main track; and to the value of the number of miles of main track in each township, city and incorporated village of each county in this State, through and into which said road is located, shall be added the value of the real estate, fixtures, stationary engines, tools, implements, machinery, and other stationary property provided for use in the daily operations of the road, situate in said township, city or village, and the total value of the rolling stock, moneys and credits shall be apportioned pro rata to each mile of the main track of said road, and the amount thereof according to the number of miles of main track in each town-
53 ship, city and village in this State, added to the value of the main track in such township, city and village, respectively: And the aggregate value of said road and property in this State, and in each county, city, township and incorporated village of this State, through or into which said road is located, shall be stated in said return.

(SEC. 14.) The return and oath required by this act of officers of rail road companies, shall be made in such form as shall be prescribed by the auditor of State.

(SEC. 15.) If any rail road, its appurtenances, equipments, etc., shall be in the hands of a receiver or other officer, such receiver or other officer shall make the returns required by this act.

(SEC. 16.) The auditor of State, or any person appointed by him for that purpose, may put any question, in writing, he may deem

proper, to any officer, agent or receiver of any rail road company having any portion of its track in this State; and he may summon any officer, receiver or agent of such company to appear before him and testify, under oath, (which said auditor is authorized to administer) touching such rail road company's property, and the management and disposition thereof; and he may, by himself, or some person appointed by him, examine the books and papers of such company, in the hands of the company, or any of its officers, agents, or receivers; and all such officers, agents and receivers shall answer, under oath, all such questions as shall be put to them or either of them, by said auditor, or any person appointed by him for that purpose, relative to the condition, amount and value of said company's property, and the management or disposition thereof; and if any such officer, receiver or agent shall refuse or neglect to appear before said auditor, or the person appointed by him, or to answer any question put to him or them as aforesaid, or submit the books and papers aforesaid for examination, in manner aforesaid, he shall be deemed guilty of a misdemeanor, and upon indictment and conviction therefor, in the court of general sessions for any county
54 (which court shall have complete and full jurisdiction in all such cases) shall be fined in any sum, not exceeding five hundred dollars, and costs of prosecution, and confined in the jail of said county, until he answers all questions which may be put to him by the auditor of State, and until said fine and costs be paid.

(SEC. 17.) The auditor of State, treasurer of State, secretary of state, comptroller general and attorney general of the State, shall constitute a State board of equalization, (a majority of whom shall constitute a quorum for the transaction of business) who shall meet at the office of the auditor of State, at the capital, on the second Wednesday of November, annually, and equalize the value of the property of rail road companies whose roads are wholly or partially in this State, as returned to the auditor of State under the provisions of this act, by increasing the value of the roads and property of such companies as shall have been, in their judgment, returned at too low a valuation, and diminishing the values of such as may have been returned at too high a valuation. They shall keep a record of their proceedings, which shall be signed by all the members present, and deposited with, and kept by, the auditor of State; and a majority of the members present shall be competent to decide all questions which may come before said board.

(SEC. 18.) The auditor of State shall certify to the county auditor of each county in which any rail road, or part thereof, may be located, the valuations of rail road property in said county, as returned to him, with all additions made to, or deductions from, the valuation of the property of any rail road in said county by the State board of equalization; and the county auditor shall charge the rail road company in the several townships, cities and incorporated villages of their county, for taxation, with the valuations returned by

proceeding to do so, and to restrain them in such action is to restrain the State itself and is beyond the power of this court.

X. They deny on information and belief the eleventh paragraph of the petition.

XI. They admit that petitioner has refused to pay said taxes but deny that they are illegal or in violation of any contract rights whatever.

XII. They deny that there were any decrees of this court in the said cause either in 1870 or 1872 and demand strict proof thereof.

XIII. They further deny that the case of Thomas E. B. Pegues *vs.* Humphreys and others was on the merits but allege that is was decided without a trial on the facts conceded in the pleadings.

XIV. That at the time said Atlantic Coast Line Company alleged that it purchased the Cheraw and Darlington Railroad Company there was pending a suit on the part of the State of South Carolina against the said Cheraw and Darlington Railroad Company, and prior to that time the legislature of said State had passed an act to provide for the collection of past due railroad taxes, under which act said suit was brought.

31

XV. That these respondents are the attorneys for the State in the suit which has been brought before the rule and injunction herein served, and are the officers of the court of common pleas of Chesterfield county charged with the prosecution of said suit and the injunction against their prosecution thereof is an injunction in effect against a suit in a State court and the court has no jurisdiction to grant the same under the Revised Statutes of the United States.

Wherefore they pray that the temporary injunction be dissolved and they be hence dismissed with their reasonable costs.

G. DUNCAN BELLINGER,
Attorney General South Carolina.
STEVENSON & MATHESON.
J. M. SPEARS.
S. W. G. SHIPP.

I hereby certify that I am solicitor and of sounsel for the defendants in the foregoing cause, and that in my opinion the foregoing plea is well founded in point of law.

G. DUNCAN BELLINGER,
Attorney General of S. C., Solicitor and of
Counsel for Defendants.

32 UNITED STATES OF AMERICA,
District of South Carolina.

G. Duncan Bellinger, being duly sworn, deposes and says that he is one of the defendants named in the foregoing plea; that he has read the same, and knows the contents thereof, and that the same is true of his own knowledge.

G. DUNCAN BELLINGER.

Subscribed and sworn to before me this 22nd day of October, A. D. 1901.

[SEAL.] J. T. GANTT,
Notary Public for S. C.

33 Amendment to Return and Answer in Paragraph XVI.

Filed Jan. 19, 1903.

The respondents hereby amend their return by inserting in the same, after paragraph 15, the following as paragraph 16:

These respondents allege that they are informed and believe that the Atlantic Coast Line Railroad Company whatever rights it possesses in the premises under the Atlantic Coast Line Railroad Company of South Carolina which was chartered under the act of 1897, 22 Stat. S. S. at Large, 653, and acquired the Cheraw and Darlington railroad in the latter part of 1897 or early in 1898, and under the provisions of its charter it was prohibited from claiming any exemption from taxation which the Cheraw and Darlington railroad might have claimed.

34 EXHIBIT "A."

Agreement as to Admission of Facts Between W. F. Stevenson and J. T. Barron, Attorneys.

Filed Jan. 19, 1903.

SOUTH CAROLINA,
Chesterfield County.

In Common Pleas.

THE STATE OF SOUTH CAROLINA
vs.
THE CHERAW AND DARLINGTON RAILROAD COMPANY.

The attorneys on behalf of the plaintiff and defendant in the above case agree that the following are facts and are hereby admitted as facts for the purposes of the case, reserving the right to object to said facts being used in evidence in the case on the ground that they are not relevant or pertinent to the issues involved in the case, if either party sees fit to object.

I. It is admitted that the Cheraw and Darlington Railroad Company was organized and completed its road from Florence, S. C., to Cheraw, S. C., in December, 1855.

II. It is admitted that the railroad board of equalization or assessors have not valued or assessed, nor have the county auditors of Darlington or Chesterfield assessed not the county auditors of any

county entered the property on the books for taxation, nor have any returns thereof for taxation been made nor have penalties for non-return or non-payment been entered on any of the books for any of the years for which the suit for taxes has been brought, but the amounts assessed for expenses of the R. R. commission have been regularly charged and collected on the tax books.

III. It is admitted that the statement of the number of miles of road in each county as set forth in the complaint is correct.

IV. It is agreed that the answer be amended as follows: viz: In paragraph XII of the answer to the first cause of action and wherever the like averment appears in answer to the other causes of action of the complaint strike out after the words "taxation and" on
35 line 3rd of paragraph XII, the words on lines 3 and 4 "organized itself and built and completed its road," and on line 4th for the word "inserting" substituting the word "invested" and strike out the words "established and" so that the sentence will read "taxation and invested large sums of money in maintaining an important public highway &c."

March 30th, 1898.

W. F. STEVENSON,
For Plaintiff's Attorneys.
J. T. BARRON,
For Deft's Attorneys.

36 Notice of Motion that the Honorable Charles H. Simonton was Incapacitated to Hear Cause by Reason of Having Been Former Complainant's Counsel in Same.

Filed Jan. 19, 1903.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

In re THOMAS E. B. PEGUES, a Citizen of Mississippi, Complainant,
vs.
R. J. HUMPHREYS, a Citizen of South Carolina, County Treasurer for Darlington County; J. M. McCalla, a Citizen of South Carolina, Tax Collector for Chesterfield County, and The Cheraw & Darlington Railroad Company, a Citizen of South Carolina, Defendants.

Ex Parte: ATLANTIC COAST LINE RAILROAD COMPANY, &c.,
vs.
G. DUNCAN BELLINGER, Attorney General of the State of South Carolina, &c.

To J. T. Barron, Esq., Columbia, S. C.:

You will please take notice that upon the call of the above proceedings before his honor, the circuit judge, we will respectfully sug-

gest that the Honorable Charles H. Simonton, circuit judge, is incapacitated to hear and determine the motion pending in the above case, for the reason that he was formerly complainant's counsel in said cause.

October 22, 1901.

G. DUNCAN BELLINGER,
Attorney General S. C.
STEVENSON & MATHESON,
J. M. SPEARS,
S. W. G. SHIPP,
Attorneys for Respondents.

37

38 Order of Judge Simonton Transferring Cause to Some Other Judge.

Filed Oct. 25, 1901.

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

In re THOMAS E. B. PEGUES, Complainant,
vs.
R. I. HUMPHREYS ET AL., Defendants.

Ex Parte: THE ATLANTIC COAST LINE RAILROAD COMPANY, Petitioners,
vs.
G. DUNCAN BELLINGER ET AL., Respondents.

The attention of the circuit judge having been called to the fact that the firm of which he was a member appeared on the record in the case of Humphreys and Pegues, upon which the motion in this case is based, he has come to the conclusion that he ought not to sit any further in the case, the hearing of the rule to show cause, returnable this day, is therefore postponed. Counsel are at liberty to fix any other day which may suit the convenience of any judge of this court to hear the motion. They will therefore, if possible, agree upon such a day or take any other steps which they may deem advisable.

CHARLES H. SIMONTON,
Circuit Judge.

October 25, 1901.

to be therein named to be and appear before your honors in this honorable court then and there true, direct and perfect an-
61 swer make to all and singular the premises and to abide and perform such further order and decree in the premises as to your honors shall seem meet.

And your orator will ever pray and so forth.

SIMONTON & BARKER,
Complainant's Solicitors.

STATE OF SOUTH CAROLINA :

Personally appeared before me Theodore G. Barker, agent of the complainant in this said bill of complaint and says that the matters and things therein set forth, so far as they are within his own knowledge, are true; and so far as they depend upon the knowledge and information of others, he believes them to be true.

THEODORE G. BARKER.

Sworn to before me this fifth day of August 1870.

D. B. GILLILAND,
[L. S.] Notary Public.

Filed August 6, 1870.

62 Order of Injunction.

Filed Jan. 19, 1903.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

THOMAS E. B. PEGUES
vs.
R. I. HUMPHREYS, JOHN MCCALLA, and THE CHERAW and Darlington Rail Road Company. } In Equity.

On hearing the bill and affidavit in this case, on motion of Simonton & Barker,

Ordered, that a writ of injunction do issue to R. I. Humphreys, county treasurer for Darlington county, and John McCalla, county treasurer for Chesterfield county, enjoining them and each of them from enforcing process for collection of any tax or assessment, charged by either of them against the Cheraw and Darlington Rail Road Company in their respective counties, and against the Cheraw and Darlington Rail Road Company, its officers and agents from paying such tax or assessment, until the further order of this court.

GEO. S. BRYAN,
U. S. Judge, Dist. S. C.

August 17, 1870.

Filed August 17, 1870.

63 Answer of Humphreys and McCalla.

Filed Jan. 19, 1903.

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

THOMAS E. B. PEGUES
vs.
R. I. HUMPHREYS, JOHN MCCALLA, and THE CHERAW & DARLINGTON RAIL ROAD COMPANY.

The joint and several answers of R. I. Humphreys and John McCalla, citizens of the State of South Carolina, to the bill of complaint of Thomas E. B. Pegues, a citizen of the State of Mississippi.

I. R. I. Humphreys for himself says, that he is the county treasurer for the county of Darlington in the said State, and is by law charged with the duty of collecting the taxes laid under the laws of the said State upon the property within the said county.

II. These defendants further answering say, that it is true as set forth in the said bill of complaint that the said Cheraw and Darlington Rail Road Company is a body corporate by the laws of the said State, doing business therein under a charter conferred by an act of the General Assembly of the said State, and the amendments thereto, and that the property of the said corporation lying within the said State has been assessed for taxes in the manner set forth in the said bill of complaint, and under the authority of the act of the General Assembly of the said State entitled "An act to provide for the assessment and taxation of property," passed September 15th 1868, and set forth more particularly in the said bill of complaint, to which reference is hereby made.

64 III. That by the constitution of the said State in art. I, section 2, it is declared that "the property of corporations now existing or hereafter created shall be subject to taxation, except in cases otherwise provided for in this constitution, and that in article IX, section 1, of the said constitution it is further declared that "the General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, the proceeds of which alone shall be taxed, and also excepting such property as shall be exempted by law, for municipal, educational, literary, scientific, religious or charitable purposes," and that saving and excepting these, no other exemptions are provided for in said constitution.

IV. That upon the adoption of the present constitution of the said State, and the pas-age of the said act hereinbefore named "to provide for the assessment and taxation of property" all exemption from taxation before granted to or claimed by the said Cheraw and Darlington Rail Road Company, was repealed and discontinued, and that thenceforth the said company became liable, and is now liable for taxation under the laws of the said State.

V. That no contract between the said Cheraw and Darlington Rail Road Company, and the said State has been violated by the assessment and taxation under existing laws of the property of the said Cheraw and Darlington Rail Road Company inasmuch as the right to repeal, modify or amend any previously existing exemption from taxation, has been and is at all times inherent and inextinguishable in the legislative authority of the said State.

VI. These defendants further answering say, that it is true as set forth in the said bill of complaint that by section 5 of an act of the General Assembly of the said State entitled "An act to alter and amend an act entitled "An act to provide for the assessment and taxation of property" passed February 28, eighteen hundred
65 and seventy, it is enacted that the collection of taxes shall not be stayed or prevented by any injunction, writ or order issued by any court or officer, except as provided in this act and in the act to provide for the assessment and taxation of property."

VII. That by the provisions of the 6th and 7th sections of the said act last above named, and also by the 81st section of the "Act to provide for the assessment and taxation of property" hereinbefore referred to, all of which are fully set forth in the said bill of complaint, and to which reference is hereby made, a full complete, adequate and convenient remedy at law is given for the recovery of taxes illegally assessed and collected upon any property within the said State, and that therefore this honorable court ought not to interfere by its writ of injunction to stay the collection of the taxes laid upon the property of the said Cheraw and Darlington Rail Road Company, and that the said company is not aggrieved nor in any manner wronged by the laying and collection of the said taxes, and is entitled to no relief therefrom at the hands of this honorable court.

Wherefore these defendants having now made all needful answer to the said bill of complaint, pray to be hence dismissed with their costs.

D. H. CHAMBERLAIN,
Attorney General of the State of
South Carolina, for Defendants.

STATE OF SOUTH CAROLINA,
Richland County.

Personally appeared before me D. H. Chamberlain, att'y gen'l of of the said State, and says that the matter- and things set forth in the

foregoing answer to the bill of complaint of Thomas E. B. Pegues, so far as they are within his own knowledge are true, and so far as they depend upon the knowledge and information of others,
66 he believes them to be true.

D. H. CHAMBERLAIN.

Sworn to before me this 14th day of September A. D. 1870.

M. J. CALNAN,
Notary Public.

Replication.

Filed Jan. 19, 1903.

In the United States Court, Fourth Circuit. In Equity.

THOMAS E. B. PEGUES
vs.
R. I. HUMPHREYS ET AL.

These repliants saving and reserving to themselves all and all manner of advantage of exception which may be had or taken to the manifold uncertainties and insufficiencies of the said defendants' — for replication thereto say, that they do and will aver maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is uncertain, evasive and insufficient in law to be repealed to by these repliants; without that that any other matter or thing in the said answer contained material or effectual in the law to be replied unto by these repliants and not herein and hereby well and sufficiently replied unto confessed or avoided traversed or denied is true. All which matters and things these repliants are ready to aver maintain and prove as this honorable court shall direct and humbly pray as in and by their said bill they have
67 already prayed.

SIMONTON & BARKER,
Complainant's Solicitors.

Filed Sept. 17, 1870.

68 Answer of Cheraw & Darlington R. R. Co.

Filed Jan. 19, 1903.

UNITED STATES OF AMERICA,
District of South Carolina.

THOMAS E. B. PEGUES, a Citizen of Mississippi,
vs.
R. I. HUMPHREYS, a Citizen of South Carolina, ET ALS.

The Separate Answer of The Cheraw and Darlington Rail Road Company, One of the Defendants, to the Bill of Complaint of Thomas E. B. Pegues, Complainant.

This defendant saving all right of excepting to said bill for answer to so much thereof as it is advised is material answering says:

It admits that complainant is a stockholder as he alleges in said company. That this defendant is a body corporate as stated under the charter which is correctly set forth in the bill.

That the charter of the North Eastern Rail Road Company and the amendment thereto are also correctly described and it is true that the acts of the legislature including the grant of exemption from all taxation were accepted by this defendant and upon the faith of said contract the rail road was completed and equipped and the company has been doing business to the great benefit of the public as a highway since the date of its organization.

That the entire capital stock including the shares owned by the complainant were originally paid up and large amounts of money were borrowed from various persons in and beyond the limits of South Carolina by the corporation for the purpose of completing the enterprise and upon the faith and assurance of the contract on the part of the State of South Carolina by which the corporation was exempted from all taxation.

69 This defendant admits that under the act of the General Assembly passed A. D. 1868 and the act of 1870, which are correctly set forth in the bill, the State auditor as stated in disregard of the protest of this defendant has certified the valuation of the property of the Cheraw and Darlington Rail Road Company made and apportioned, under said act, to the several county auditors who have respectively charged the said rail road company in their several counties.

That said valuation amounts as defendant is informed to the sum of four hundred thousand dollars, and the amounts charged by the several county auditors for taxation sum up the total amount of tax of — dollars besides penalties and costs.

This defendant admits that it has been notified by the county

treasurers that executions will be enforced against the property of the company in their respective counties in case the taxes and penalties and costs are not paid.

This defendant admits that it has been advised by counsel learned in the law that no measures could be adopted by it to resist the demand for said taxes or prevent a sale of the property of the company under said executions.

And this defendant prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THEODORE G. BARKER,
Attorney for Cheraw and Darlington Rail Road Company.

Filed Sept. 19, 1870.

70 Order Making Injunction Perpetual.

Filed Jan. 19, 1903.

United States Circuit Court, South Carolina District, Fourth Circuit.
In Equity.

THOMAS E. B. PEGUES, a Citizen of Mississippi,
vs.
R. I. HUMPHREYS, a Citizen of South Carolina, ET ALS.

Hearing the pleadings in this cause on motion of Simonton & Barker, solicitors for complainant,

Ordered, that the injunction heretofore granted be continued and the same is hereby made perpetual.

GEO. S. BRYAN,
U. S. Judge, Dist. S. C.

April 27, 1871.

Filed Ap'l 27, 1871.

71 Petition and Allowance of Appeal.

Filed Jan. 19, 1903.

UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit. In Equity.

THOMAS E. B. PEGUES, a Citizen of the State of Mississippi,
vs.
THE CHERAW AND DARLINGTON RAILROAD COMPANY, R. I. Humphrey, and John McCalla, Citizens of the State of South Carolina.

To the honorable the judges of the circuit court for the district aforesaid:

The humble petition of R. I. Humphrey and John McCalla, showeth:

1. That by the decree dated the 27th day of April A. D. 1871, in

the above mentioned cause, it was ordered that the decree of injunction theretofore granted restraining your petitioners from proceeding to enforce the collection of the taxes levied on the property of the said Cheraw and Darlington Railroad Company &c., be made perpetual.

2. That the said order, dated as aforesaid, is, as your petitioners are advised and submit, erroneous, and the same ought to be reversed.

Your petitioners, therefore, humbly pray that they may be allowed an appeal from the said decree to the Supreme Court of the United States.

D. H. CHAMBERLAIN,
Solicitor for Petitioners.

D. T. CORBIN, Of Counsel.

Appeal allowed as prayed for.
By the court.

[SEAL.]

DAN'L HORLBECK,
C. C. C. U. S., Dist. S. C.

July 10, 1871.

72 Summons to Cheraw and Darlington Railroad Company to Become Party to Appeal.

Filed Jan. 19, 1903.

THE UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit. In Equity.

The President of the United States of America to the Cheraw and Darlington Railroad Company:

You are hereby summoned to be and appear before the judges of the Supreme Court of the United States at the Capital at Washington on the first Monday of December next, then and there to join with R. J. Humphreys and John McCalla in prosecuting an appeal from the decree of this court granting a perpetual injunction against you and the said R. J. Humphreys and John McCalla on the complaint of Thomas E. B. Pegues.

And also that you do, within thirty days from the service, file or cause to be filed with the clerk of the circuit court for said district, a notice of severance if you do not desire to be joined with the said R. J. Humphreys and John McCalla as an appellant in the prosecution of the said appeal.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, at Charleston, in said South Carolina district, the tenth day of April, 1871, and in the ninety-fifth year

of the Sovereignty and Independence of the United States of America.

D. H. CHAMBERLAIN,
For Appellants.
D. T. CORBIN, Of Counsel.

Teste:
DAN'L HORLBECK,
[SEAL.] C. C. C. U. S. for S. C.

We acknowledge service this 7th day of June, 1871.
SIMONTON AND BARKER.

73 Notice of Severance on Appeal.

Filed Jan. 19, 1903.

UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit.

In the Circuit Court.

THOMAS E. B. PEGUES
vs.
R. I. HUMPHREYS ET AL.

The Cheraw and Darlington Rail Road Company one of the defendants in the above entitled cause upon whom citation has been served to join with R. I. Humphreys and others, appellants, in prosecuting an appeal from the decree of the circuit court of the United States for the district aforesaid in the above entitled cause hereby file in said circuit court their notice that they are content with the decree of the circuit court and do not appeal therefrom and do hereby sever from their co-defendants on said appeal.

THEODORE G. BARKER, Solicitor.

Filed July 5, 1871.

74 Waiver of Security on Appeal.

Filed Jan. 19, 1903.

R. I. HUMPHREY and JOHN MCCALLA, Appellants,
vs.
THOMAS E. B. PEGUES, Appellee.

The appellee hereby consents that the appellants may appeal to the Supreme Court of the United States from the decree entered in the case of Thomas E. B. Pegues against R. I. Humphrey, John McCalla and the Cheraw and Darlington Railroad Company on the 27th day of April 1871, without security.

SIMONTON & BARKER,
Att'ys for Appellee.

75 Citation on Appeal.

Filed Jan. 19, 1903.

UNITED STATES OF AMERICA, *ss:*

To Thomas E. B. Pegues, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the district of South Carolina, wherein R. I. Humphrey and John McCalla, are appellants and you are appellee, to show cause if any there be, why the decree in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this 10th day of July, A. D. 1871, in the year of our Lord one thousand eight hundred and seventy one.

GEO. S. BRYAN,
U. S. Judge, Dist. of So. Ca.

Service acknowledged, July 11, 1871.

SIMONTON & BARKER,
Att'y for Appellees.

76 Mandate.

Filed Jan. 19, 1903.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of South Carolina, Greeting:

Whereas, lately in the circuit court of the United States for the district of South Carolina before you, or some of you, in a cause between Thomas E. B. Pegues, complainant, and The Cheraw and Darlington Railroad Company, R. J. Humphrey and John McCalla, defendants, wherein the decree of the said circuit court, entered in said cause on the 27th day of April, A. D. 1871, is in the following words, viz:

"Hearing the pleadings in this cause, on motion of Simonton and Barker, solicitors for complainant, ordered that the injunction heretofore granted be continued, and the same is hereby made perpetual."

As by the inspection of the transcript of the record of the said

circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by R. J. Humphrey and John McCalla agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and seventy-two, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs; and that the said complainant, Thomas E. B. Pegues, recover against the said defendants twenty dollars for his costs herein expended and
77 have execution therefor.

MARCH 10, 1873.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy two.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Supreme Court of the United States.

I, James H. McKenney, clerk of the Supreme Court of the United States, do hereby certify that the foregoing is a true copy of the mandate of said Supreme Court issued in the case of R. I. Humphrey, *et al.*, appellants, *vs.* Thomas E. B. Pegues, No. 124 December term 1872.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the City of Washington, this 4th day of March, A. D. 1898.

[SEAL.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Filed March 15, 1898.

78 Copy Petitions to Railroad Board of Assessors.

Filed Jan. 19, 1903.

CHERAW, S. C., May 25th, 1900.

To the board of railroad assessors:

By virtue of the petition of E. T. King county supervisor of Chesterfield county and the statute of February 19th, 1900 you are called

such company or companies, after adding thereto or deducting therefrom the amounts directed by the auditor of State.

(SEC. 19.) If any rail-road company, or its officers, shall fail
55 to make the returns to the auditor of State required by this act, on or before the twentieth day of October, annually, the State board of equalization shall proceed to ascertain the value of said company's road and property, according to the principles prescribed in this act, from the best information they can conveniently *obtain, and add thereto fifty per centum as penalty, and apportion* the same to the several counties, townships, cities and incorporated villages, through or into which said road or any part thereof may be located. And the State auditor shall certify the same to the several county auditors, who shall place the same on their duplicates for taxation, and if any such company or its officers, shall fail to make the return to any county auditor required by this act. the State auditor shall ascertain the amount properly chargeable to such company in said county, and certify the same to the proper county auditor, adding ten dollars thereto as penalty, (the whole of which penalty shall be paid into the State treasury); and the county commissioners shall charge such company, in the proper municipalities, with the taxes on the value so certified by the State auditor, and charge said company on the duplicates separately, with said ten dollars, without charging any taxes thereon; and the county treasurer shall pay the same into the State treasury, at his first annual settlement after the collection thereof.

7. That subsequently, by an act approved the 28th February 1870, entitled "An act to alter and amend an act entitled "An act to provide for the assessment and taxation of property," the legislature did, in section 5 of said act, declare that the collection of taxes shall not be stayed or prevented by any injunction, writ or order issued by any court or officer, except as provided in this act, and in the "act to provide for the assessment and taxation of property aforesaid."

And in the same act it is further provided as follows, by section
6: "Whenever any person or persons charged with taxes
56 upon the books of any tax collector in this State, shall state in writing, to said collector, that he or they have been erroneously or illegally charged with the same, the said collector shall submit to the county auditor a full statement of the facts in the case, which statement shall be forwarded to the State auditor, with such additional information relating thereto as the said county auditor may be able to give; and said tax collector shall not be required to proceed against the party or parties so claiming to have been erroneously or illegally charged with taxes, by distress or otherwise, until the State auditor shall, in writing, direct him so to do." And by section 7, "In any action or proceeding against any tax collector in this State, for the purpose of recovering any property or money alleged to have been erroneously or illegally assessed and collected, the party bringing such action or proceeding shall

make it appear that a notice in writing of the claim on which suit may be brought was given to said tax collector, in pursuance of the sixth (6) section of this act; and unless it shall be made to appear that said collector has proceeded contrary to the provisions of this act, the amount recovered in such suit shall not exceed the value of the property or money aforesaid."

8. That by the 81st section of the same act passed at the special session in 1868, it was also provided that, "if any taxes charged on any *real estate be regularly paid, and such real estate be erroneously* returned delinquent, and sold for such taxes, the sale shall be totally void; or if any taxes shall be illegally assessed and collected, when the same shall become known to the county auditor, he shall, on demand of the party interested, submit the matter to the auditor of the State; and if the auditor of State approve thereof, in writing, the amount paid by the purchaser at such void sale, or the amount so illegally collected, shall be repaid to the party paying the same, out of the county treasury, on the order of the county auditor, and so much of said taxes as shall have been paid into the
57 State treasury shall be refunded to the county treasury, and the county auditor shall retain the same in his next annual settlement, and charge the State therewith."

That the State auditor claiming to act under said last mentioned act of the legislature and disregarding the protest of the Cheraw and Darlington Rail Road Company as well as the contract obligation by which the State is bound by its grant to said company of an exemption from taxation as above recited, has certified the valuation of the property of said company made and apportioned under said act to the several county auditors who have respectively charged the said rail road company in their several counties for taxation.

9. That by the 35th section of said act of 1868, "it is declared that the county treasurer may enforce the collection of any tax or penalty assessed under this act at any time after the same becomes due, by distraint, attachment or other legal proceedings instituted in his name as such treasurer; and in case of his death or retirement from office before the collection of such taxes or penalties, his successor in office or subsequent treasurer, may be made a party to such proceedings and prosecute the same to final judgment and execution."

That R. I. Humphrey, county treasurer for Darlington county and John McCalla, county treasurer for Chesterfield county, have notified the Cheraw and Darlington Rail Road Company that if the tax is not paid on the property of the said company in said counties in which the road is located, execution will be enforced against the property of said company.

10. That the said Cheraw and Darlington Rail Road Company, as your orator is informed, is unable by any proceedings, permitted to be issued out of the courts of this State, to protect the property of the corporation, which is the property of its stockholders, from the

great wrong and injury, with which it has been threatened, and which is now about to be enforced.

58 That by the 6th section of the act approved 28th February 1870, it is positively declared that the collection of taxes shall not be stayed or prevented by any injunction, writ, or order, issued by any court or officer, except as provided in this act, or the act of the special session of 1868.

That by the 6th section of the act approved 28th February 1870, the power is reserved to the State auditor, to decide whether the tax complained of as erroneous or illegally charged, shall be collected. That if the State auditor shall decide that such taxes have not been erroneously or illegally charged, no injunction, writ or order of any court, shall stay the collection of said tax. That in section 7 of the act of 28th February 1870, a remedy is professed to be given by an action against the tax collector, but it is wholly uncertain and inadequate. In section 8 of the same act, it is provided that the judgment, if recovered in such suit, shall be paid in the manner provided in the 81st section of act passed at the special session of 1868. And the 81st section so referred — contemplates no payment in any case, unless the auditor of the State shall approve thereof in writing. That this judicial power is taken from those to whom, under the constitution of the State, it is committed; the exercise of it by them, in certain cases, prohibited; and that power and the exercise of it transferred to the State auditor.

11. That thus while all protection is denied to the Cheraw and Darlington Rail Road Company, against the collection of the tax, although illegal, no certain adequate relief at law can be had for the recovery of the same, although illegally collected, unless the State auditor shall assent thereto.

That your orator having been informed of the tax assessed and payment of which is to be enforced on the property of the said Cheraw and Darlington Rail Road Company, applied to the president and directors of the said company to resist the same.

12. That they informed your orator they had no means
59 with which to resist the collection of the said tax. That the act of 1870 had taken from them the right hitherto enjoyed by any corporation within or citizen of the State, to submit to the courts of the State, the question of the legality of a tax about to be enforced. And that such right was now denied to the Cheraw and Darlington Rail Road Company, and that under such circumstances they did not know what opposition they could make to the collection of the said tax.

That when forced to pay the same, they did not know what measures they could adopt to recover back the money, if paid, or their property if sold. That as they were advised if they had any remedy whatever, it was an action against the tax collectors, but that when repayment of money was ordered to be made by these officials, they were officers not able to respond to the payment of so large an amount. But that moreover the act did not even contemplate or

allow a recovery against these officers, so that a judgment would affect them personally. For if a verdict was had against them, other legislative enactments professed to provide a mode in which the judgment should be satisfied; but that such mode was uncertain in all respects and wholly inadequate to secure to the Cheraw and Darlington Rail Road Company the repayment of the money if paid, or the recovery of its property if sold. That no repayment of money or recovery of property, could be had under any circumstances, unless the State auditor directed it, and if he would direct it, a matter most improbable after he had decided that it should be assessed, it would then still remain for the State to decide, whether the money should be paid back if the money had been paid, or the property restored if the property had been sold.

That this matter rested in the pleasure of the State, as the State could not be sued. And thus no certain or adequate means existed for the repayment of the money, although illegally collected, or the recovery of the property if illegally sold.

13. The president and directors of said Cheraw and Dar-
60 lington Rail Road Company having failed and being power-
less, by the laws of the State to resist the assessment and enforcement of said tax, unlawfully imposed upon the property of the company. Your orator is exposed, together with all other stockholders in said company to great wrong and damage, and have no adequate relief in the premises in any other jurisdiction save in a court of equity and through the process of injunction to restrain the unconstitutional and illegal action of the officers of the State of South Carolina.

14. To the end therefore that the several parties above named, as defendants, may full, true and perfect answer make to the premises, that the said R. I. Humphrey, county treasurer for Darlington county and John McCalla, county treasurer for Chesterfield county, may be restrained and enjoined from proceeding in each of their several counties for which they are county treasurers by execution or other process of any kind from enforcing the payment of the taxes so in each county charged upon the assessment made of the value of the property of the Cheraw and Darlington Rail Road Company in such county.

That the Cheraw and Darlington Rail Road Company may be restrained and enjoined from the payment of any or all of the taxes so demanded by the said county treasurers.

May it please your honors to grant unto your orator not only your writ of injunction to be directed to the said R. I. Humphrey, treasurer for Darlington county, John McCalla, treasurer for Chesterfield county, and the Cheraw and Darlington Rail Road Company, their and its officers, agents and attorneys from doing or causing to be done all or any of the matters and things hereinbefore complained of, but also your writ of subpœna directed to the said R. I. Humphreys, John McCalla and the Cheraw and Darlington Rail Road Company, commanding them on a day certain and under a penalty

which is "taxable" can be legally the subject of "return" for taxation, or the subject for assessment, and therefore that the language of section I of the act of 1900, viz: "That when railroad property has not been returned nor assessed for any year and was not pur on the tax books for such year or years, and no taxes were paid thereon, and more than a year has elapsed since taxes for such years, if assessed at the proper time, would have become due" cannot be made to apply to the property of the Cheraw and Darlington Railroad Company, which is judicially declared to have been non-taxable, and therefore not returnable or the subject of a return for taxation or assessment, or liable to be put on the tax books or for payment of taxes, in any year between 1863 when it was exempt, and 1898 when its exemption was surrendered by the Atlantic Coast Line Railroad Company in South Carolina to the State and accepted by the State.

(4.) Respondents further submit that in addition to what is above shown the seventh section of the act of 19th February 1900 expressly provides as follows:

"SEC. 7. The provisions of the act shall not apply to any railroad property which may be adjudged by the courts to be exempted by law from the taxes which hereafter may be assessed against it under this act."

The language of this section it is submitted is equivalent to an express exception from the provisions of the act of the property of the Cheraw and Darlington Railroad Company, which has been finally and solemnly adjudged in an issue made between the State and the said company to be exempt by law from all taxes.

(5.) Respondents submit that the burden of showing that
85 the property of the Cheraw and Darlington Railroad Company by law in 1899, 1890, 1891, 1892, 1893, 1894, 1895, 1896 and 1897 was taxable and within the terms of act of 19th February 1900 rests upon the petitioner and supervisor of Chesterfield county and that this should be shown to the complete satisfaction of the State board of railroad assessors before your honorable body can be persuaded to act in derogation of the adjudged rights of the Cheraw and Darlington Railroad Company or its successors and in contempt of the injunction of the supreme and circuit courts of the United States.

Respectfully submitted,
J. T. BARRON,
Counsel for A. C. L. R. R. Co., with Whom was
THEO. G. BARKER.

86 Statement of Counsel as to Action Brought in said Court and Sought to be Enjoined.

Filed Jan. 19, 1903.

The complaints in the actions sought to be enjoined were as follows:—on thirty causes of action—exactly similar except in dates and amounts, so that only one cause of action is here set out:—

87 Copy of First Cause of Action in Complaint Sought to be Enjoined.

Filed Jan. 19, 1903.

STATE OF SOUTH CAROLINA,
County of Chesterfield.

In Common Pleas.

THE STATE OF SOUTH CAROLINA, Plaintiff,
vs.
THE CHERAW AND DARLINGTON RAILROAD COMPANY and THE Atlantic Coast Line Railroad Company, Defendants.

The complaint of the above plaintiff shows—for a first cause of action.

I. That the defendants are corporations created and existing under the laws of South Carolina and doing business within said State.

II. That the Cheraw and Darlington Railroad Company owned a railroad consisting of road bed, right of way, track, depots, water tanks, cars, engines and general railroad equipments and franchise in the fiscal year beginning November 1, 1888, twelve 55/100 miles in length of the value of six thousand dollars per mile in the county of Chesterfield.

III. That the same was not returned for taxes and had not been on the books, nor had it paid taxes for that year, and more than a year had elapsed since it should have paid taxes if they had been properly charged at the right time, and under the authority given by the act of the General Assembly of 1900, entitled "An act to provide for the assessment for taxation of railroad property which has been off the tax books, for the years which they have been off the books and to fix the time when such taxes shall become due, and for the collection thereof," the railroad board of assessors were convened in extra session in the early part of the year 1900 by the
88 secretary of state, on proper petition filed for the purpose of fixing the value of said property for taxation for the fiscal year beginning November 1st, 1888, and the nine years subsequent thereto, and they fixed the value of said road for the fiscal years aforesaid at six thousand dollars per mile, and such value was duly certified to the county auditor of said county, and the same was duly entered in the tax books of that year and the taxes were properly charged under the levies provided by law for that year, and a certified statement was furnished the treasurer of said county for that year of the taxes charged thereon.

IV. That the value of said property as thus fixed was $75,300.00 and by the act to raise supplies for that year the rate of tax levied and directed to be levied was in the aggregate, including the consti-

tutional school tax 14½ mills and the said sum was levied upon said assessed value amounting to the sum of $1,073.02 *dollars* and the same became a just charge upon the said property as soon as the assessment was made and the levy entered pursuant to the same.

V. That on the 10th, day of November, 1900, the treasurer of said county demanded of the agent of the Atlantic Coast Line Railroad Company which company was then and still is in possession of the property formerly owned by the Cheraw & Darlington Railroad Company, having acquired the same by consolidation with said Cheraw & Darlington Railroad Company, payment of said taxes and payment thereof was refused, and more than sixty days have elapsed since such demand and the payment of said taxes is still refused.

VI. That said sum had been legally assessed and levied under the laws of this State and is due and owing to the plaintiff.

89 Extract from Revised Statutes of South Carolina, 1893, Embracing Sections 233 to 242, in Relation to Assessment of Railroad Property.

Filed Jan. 19, 1903.

The provisions of the Revised Statutes of South Carolina, 1893, relating to assessments and returns of railroad companies *was* as follows:

Article VI.

Special Rules as to Returns and Assessments of Railroad, Express, Telegraph, and Insurance Companies, and Provisions as to Other Corporations.

Sec. 233. Railroads and like companies to return property in use as personalty; lien for taxes; return, when and where made.

Sec. 234. Railroad companies; annual returns to comptroller general; how made and what to contain.

Sec. 235. The same; annual returns to county auditors; what to embrace.

Sec. 236. How value of railroad property fixed and apportioned.

Sec. 237. Comptroller general prescribes forms of return and oath.

Sec. 238. Receiver makes returns when road in his hands.

Sec. 239. Comptroller general's powers relative to returns and investigation touching same.

Sec. 240. State board of assessors; who constitute; annual meeting and proceedings.

Sec. 241. Comptroller general certifies action of board to county auditors, who conform their duplicates thereto.

Sec. 242. Where railroad company fails to make returns, board to ascertain value and add penalty; result certified to auditors.

90 "SEC. 233. The road bed, right of way, station buildings, toll houses, structures, tools, machinery, poles, wires, fixtures, vessels, and real estate, owned and necessarily in daily use by any railroad, turnpike, plank road, bridge, telegraph, canal, or slack-water navigation company, in the prosecution of its business, shall, for the purposes of this chapter, if the company be organized in this State, be treated as personal property. But the lien, for taxes, shall attach to the property as if the same were real property, and the president, secretary, or principal accounting officer thereof, shall include the value thereof in the return of the other personal assets of such company for taxation; which return shall be made in the month of January, or before the twentieth of February, annually, to the several auditors of the counties in which such road, canal bridge, telegraph line, or slack-water navigation company may be situated, according to the value of such property in each, together with a statement of the amount of such assets situate in each city, town, village, or ward in said counties, respectively; and the value of the movable assets of such company shall be apportioned to each town, city, ward, or village, in proportion to the value of the road bed, canal, slack-water navigation, bridge, or telegraph line in each."

"Railroad held not liable for taxes, when exempt by its charter, as against bonds having first statutory lien thereon.—Hand *v.* R. R. Co., 17 S. C., 219. An assessment to pay expenses of railroad commissioners valid.—C. C. & A. R. R. Co. *v.* Gibbes, 24 S. C., 60; *ib.*, 27 S. C. 385; 4 S. E., 49."

"SEC. 234. The president and secretary of every railroad company whose track or road bed, or any part thereof, is in this State, shall annually, between the first of January and twentieth of February, return to the comptroller general, under their oaths, the total length thereof in each county, city, town and incorporated village in this State; the total length of their double track in this State, and the length thereof in each county, town, city, and incorporated village of this State; the total length of all their side tracks, and
91 the length thereof in each city, county, town and incorporated village in this State; the location and value of all their shops, depots, grounds, station houses, wood and water stations, buildings, stationary engines, tools, implements, and fixtures in South Carolina, and all other real estate necessary to the daily running operations of the road; the number and value, each, of all their locomotive engines, passenger, freight, platform, gravel, construction, hand, and other cars; the value of their moneys and credits; the total value of the entire road, appurtenances, and equipments, and the total value of said road in South Carolina, with its appurtenances and equipments."

"SEC. 235. The president and secretary of every railroad company mentioned in the preceding section shall also, annually, between the first of January and the twentieth of February, return to the county auditor of each county in South Carolina through or into which such road, or any part thereof, may be located, a statement of the

value of said road, and the property of the company in said county, and in each of the towns, cities and villages of said county through or into which said road, or part thereof, is located, in the manner and form required by this chapter in the return to the comptroller general."

"SEC. 236. In ascertaining the value of the road and property of any railroad company, the value of the right of way, bed and track of the whole road shall be fixed, and such value apportioned pro rata to each mile of the main track; and to the value of the number of miles of main track in each town, city and incorporated village of each county in this State through and into which said road is located, shall be added the value of the real estate, fixtures, stationary engines, tools, implements, machinery and other stationary property *property* provided for use in the daily operations of the road, situate in said town, city, or village; and the total value of the rolling stock, moneys and credits shall be apportioned pro rata to each mile of the main track of said road, and the amount thereof, according to the number of miles of main track in each town, city and village in this State, added to the value of the main track in
92 such town, city and village, respectively; and the aggregate value of said road and property in this State, and in each county, city, town and incorporated village of this State, through or into which said road is located, shall be stated in said return."

"SEC. 237. The return and oath required of officers of railroad companies shall be made in such form as shall be prescribed by the comptroller general."

"SEC. 238. If any railroad, its appurtenances, equipments, and property of any kind soever, shall be in the hands of a receiver or other officer, such receiver or other officer shall make the returns required by this chapter."

"SEC. 239. The comptroller general, or any person appointed by him for that purpose, may put any question, in writing, he may deem proper, to any officer, agent or receiver of any railroad company having any portion of its track in this State; and he may summon any officer, receiver or agent of such company to appear before him and testify, under oath (which oath said comptroller general is authorized to administer), touching such railroad company's property, and the management and disposition thereof; and he may, by himself, or some person appointed by him, examine the books and papers of such company, in the hands of the company, or any of its officers, agents or receivers; and all such officers, agents and receivers shall answer under oath, all such questions as shall be put to them, or either of them, by said comptroller general, or any person appointed by him for that purpose, relative to the condition, amount and value of said company's property and the management or disposition thereof."

"SEC. 240. The treasurer of the State, secretary of state, comptroller general and attorney general of the State, and the chairman of the board of railroad commissioners of this State, shall constitute

a State board of assessors, a majority of whom shall constitute a quorum for the transaction of business, who shall meet at the office of the comptroller on the second Wednesday of May, annually, or as soon thereafter as the comptroller general shall notify said
93 board that the returns of the several railroad companies have been filed in his office, and shall determine and assess the value of the property of railroad companies whose roads are wholly or partially in this State, returned to the comptroller general under the provisions of this chapter, increasing the value of the road and property of such company or companies as shall have been, in their judgment, returned at too low a valuation, and diminishing the values of such as may have been returned at too high a valuation. They shall keep a record of their proceedings, which shall be signed by all of the members present, and deposited with and kept by the comptroller general; and a majority of the members present shall be competent to decide all questions which may come before said board."

"SEC. 241. The comptroller general shall certify to the county auditor of each county into which any railroad, or part thereof, may be located, the valuations of railroad property in said county as determined and assessed by the State board of assessors, with all additions made to or deductions from the valuation of the property of any railroad company in said county by the State board of assessors; and the county auditor shall charge the railroad company or companies in the several cities, towns, townships and incorporated villages of their county, for taxation, with the valuations determined and assessed by the State board of assessors."

"SEC. 242. If any railroad company, or its officers, shall fail to make the returns to the comptroller and to each county auditor in each county in which such railroad, or part thereof, may be located, as herein required, on or before twentieth day of February, annually, the State board of assessors shall proceed to ascertain the value of said companies' road and property, according to the principles prescribed herein, from the best information they can conveniently obtain, and add thereto fifty per centum as penalty, and apportion the same to the several counties, towns, townships, cities any incor-
94 porated villages through or into which said road, or and part thereof, may be located, and the comptroller general shall certify the same to the several county auditors, who shall place the same on their duplicates for taxation."

95 Decree.

Filed 19 January, 1903.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

In re THOMAS E. B. PEGUES, a Citizen of Mississippi, Complainant,
vs.
R. I. HUMPHREYS, a Citizen of South Carolina, County Treasurer for Darlington County; John McCalla, a Citizen of South Carolina, Tax Collector for Chesterfield County, and The Cheraw and Darlington Railroad Company, a Citizen of South Carolina, Defendants.

Ex Parte: THE ATLANTIC COAST LINE RAILROAD COMPANY, a Citizen of Virginia,
versus
G. DUNCAN BELLINGER, Attorney General for the State of South Carolina; Stevenson and Matheson, J. M. Spears, S. W. G. Shipp, I. P. Mangum, County Treasurer for Chesterfield County, South Carolina; W. H. Lawrence, County Treasurer for Darlington County, South Carolina; J. O. McLendon, County Treasurer for Florence County, South Carolina, All of said Persons Except the Atlantic Coast Line Railroad Company Being Citizens of the State of South Carolina.

In the year 1870 Thomas E. B. Pegues a citizen of the State of Mississippi was a stockholder of the Cheraw and Darlington Railroad Company, a corporation created by an act of the General Assembly of the State of South Carolina and owning a railroad extending from the town of Florence in (what was then the county
96 of Darlington and now) the county of Florence through a part of said Darlington county and a part of said Chesterfield county to the town of Cheraw in Chesterfield county in said State—all of the property of said company being within the said two counties.

On the 6th day of August 1870, said Pegues, as such stockholder, brought his bill of complaint in the circuit court of the fourth circuit for the district of South Carolina against the tax collectors of the State of South Carolina for said counties and against said company alleging *inter alia*, that said Cheraw and Darlington Railroad Company was made a body corporate by act of the General Assembly of the State of South Carolina passed the 19th day of December A. D. 1849—that section five of said act was (by an act passed 17th December 1863) amended so as to read as follows, to wit: "That all the powers rights and privileges granted by the charter of the North-

eastern Railroad Company are hereby granted to the Cheraw and Darlington Railroad Company; * * *" and it was also provided in said act (A. D. 1863 sec. III) "that this charter shall in no wise be subject to the provisions of the forty-first section of the act of assembly of South Carolina passed the seventeenth day of December in the year of our Lord one thousand eight hundred and forty one."

For a proper understanding of this last enactment the act of 1841 is quoted as follows, viz: Preamble.—"An act to incorporate certain villages societies and companies * * * and to establish the principles on which charters of incorporations will hereafter be granted. * * *"

"SECTION XII. * * * That it shall become part of the charter of every incorporation, which shall at the present or any succeeding session of the General Assembly receive a grant of a charter or any renewal amendment or modification thereof (unless the act granting such charter renewal amendment or modification shall in express terms except it) that every charter of incorporation granted renewed or modified shall at all times remain subject to amendment alteration or repeal by the legislative authority."

97 It was further alleged, that, "by the terms of the charter of the North Eastern Railroad Company, A. D. 1855 it was declared as follows, viz:

"SEC. L. That the stock of the North Eastern Railroad Company that it now owns or may hereafter acquire which is connected with or subservient to the works authorized in the charter of said company shall be and the same is hereby exempted from all taxation during the continuance of the present charter of the said company."

It was claimed in said bill by complainant Pegues "that the exemption from taxation granted by the State of South Carolina to the North Eastern Railroad Company by amendment of its charter in 1855 constitutes a part of the powers rights and privileges secured to the Cheraw and Darlington Railroad Company by the above recited act of assembly A. D. 1863, and that the acceptance thereof by the company constitutes a contract between the State of South Carolina and the stockholders of said company" and that the express exception from the provisions of the 41st section of the act of 1841, contained in the amended charter (A. D. 1863 sec. III) of the Cheraw and Darlington Railroad Company, secured to that company and its stockholders a complete and perpetual exemption of its property from all taxation by the State, and her tax officers, beyond the power of repeal by any subsequent legislature.

The bill in that case sets forth the act of assembly of South Carolina of 1868 "providing for the assessment and taxation of property" and the special provision of the act of 28th February 1870 amending the act of 1868 as follows: which (in sec. 5) declared that "the collection of taxes shall not be stayed or prevented by any injunction suit or order issued by any court or officer except as provided in this act. * * *

It was further alleged by complainant that the State tax officials

had proceeded under said act to charge the property of the
98 Cheraw and Darlington Railroad Company with taxes against the protest of said company claiming its exemption by contract with the State of South Carolina and that the defendants named in the bill, viz: R. J. Humphreys the then county treasurer for Darlington county and John McCalla the then county treasurer for Chesterfield county had notified the Cheraw and Darlington Railroad Company that if the tax is not paid on the property of the said company in said counties in which the road is located execution will be enforced against the property of said company.

It further alleged in said bill "that the said Cheraw and Darlington Railroad Company is unable by any proceedings permitted to be issued out of the courts of this State to protect the property of the corporation, which is the property of the stockholders, from the great wrong and injury with which it has been threatened and which is now about to be enforced."

Complainant therefore prayed a writ of injunction against said tax officials representing the State from proceeding by execution or other process of any kind from enforcing the payment of the taxes so charged, and also against the Cheraw and Darlington Railroad Company from the payment of all or any of the taxes so demanded.

Thereafter on the 17th August 1870 the judge of the circuit court of the fourth circuit for the district of South Carolina ordered an injunction to issue in accordance with the prayer of the bill and until the further order of the court.

On the 14th September A. D. 1870 the Honorable D. H. Chamberlain the then attorney general of the State of South Carolina appeared in the said circuit court for the tax officials of the State and filed their answer to said bill of complaint admitting the official character of defendants, the incorporation of the Cheraw and Darlington Railroad Company under its charter and the amendments thereto and that the property of said corporation lying within the said State had been assessed for taxes in the manner set forth in the bill of complaint.

99 The answer set forth the provisions of article first section 3 and article IX section I of the then constitution of the State and claimed that thereunder and upon the passage of the act to provide for the assessment and taxation of property all exemption from taxation heretofore granted to or claimed by the Cheraw and Darlington Railroad Company was repealed and discontinued and that thenceforth said company became liable and is now liable for taxation under the laws of the said State.

The answer further claimed:

"V. That no contract between the said Cheraw and Darlington Railroad Company and the said State has been violated by the assessment and taxation under existing laws of the property of the Cheraw and Darlington Railroad Company inasmuch as the right

to repeal modify or amend any previously existing exemption from taxation has been and is at all times inherent and inextinguishable in the legislative authority of the said State."

It was also claimed that complainant under the provision of the State laws had a complete and adequate remedy at law.

The Cheraw and Darlington Railroad Company also answered—admitting the case made by the bill and its inability to resist the demand for said taxes or to prevent a sale of the property of the company under executions under the State laws.

On the 17th. September 1870 complainant filed his replication and on the issues so made and joined the case was heard in the said circuit court, and, on the 27th. April 1871, it was "ordered, that the injunction heretofore granted be continued and the same is hereby made perperual."

The attorney general D. H. Chamberlain on behalf of the State tax officials appealed from said decree to the Supreme Court of the United States.

The appeal was heard in December term 1872, when it was by said Supreme Court

"Ordered, adjudged and decreed by the court that the de-
100 cree of the said circuit court in this cause be and the same is hereby affirmed with costs. * * *"

The State of South Carolina as it appears from the testimony before this court practically accepted said decision as conclusive of the question of the right of the Cheraw and Darlington Railroad Company and its successors to the exemption from all taxations by the State and no attempt was made to assess the property of said company or of its successors for taxation or to tax the same or to collect taxes thereon from the year 1870 down to the year 1897—a period of twenty seven years.

In the year 1897 on March 2, an act of the legislature of South Carolina was passed entitled "An act for the collection of past due railroad taxes and for the distribution of the same," in which it was enacted "Sec. 1. That the attorney general is hereby directed to proceed to institute proceedings to test the right of any railroad company in this State to an exemption from taxation if in his judgment he thinks it proper to do so.

Sec. 2. That the State in any such case may bring one action for all taxes due, State, county "ordinary," and "special," recover the whole in one proceeding * * * ." Stats. of South Carolina vol. 22 p. 453.

Under this act the then attorney general on the 26th, day of March, A. D. 1897 served a summons and complaint upon the officers of the Cheraw and Darlington Railroad Company claiming the sum of one hundred and thirty four thousand dollars to be due to the State by the Cheraw and Darlington Railroad Company, as for twenty years' back taxes and penalties for which the company was alleged to have been "delinquent" in each of said years as if the same had been regularly assessed and charged in each year. Upon appeal in that

together to assess the Cheraw & Darlington Railroad Company for taxation for ten years prior to 1899. The supreme court has decided that an assessment must be made before a suit can be maintained, and we desire to test the liability of the company for taxes and agreed to limit any recovery to ten years back, to wit: 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897 & 1898. The road is on the books for 1899 and 1900 at $6,000.00 a mile. In the former suit, which was discontinued on account of want of assessment the company agreed in writing that it should be valued at $6,250.00 per mile for the 20 years beginning with 1877, which agreement is hereto attached. In order to be absolutely fair we are willing for it to be put at $6,000.00 per mile as you have done the past year and ask that it be so assessed.

All of which is respectfully submitted.

W. F. STEVENSON,
Att'y for Counties Interested.

STATE OF SOUTH CAROLINA,
County of Chesterfield.

The petition of E. T. King as supervisor of Chesterfield county shows:—

I. That he is supervisor of said county.

II. That the Cheraw & Darlington railroad lies partly in Chesterfield county and the balance in Darlington and Florence counties.

III. That prior to 1899 for more than thirty years the said road was left off the tax books and paid no State and county taxes
79 and he desires that the railroad board of assessors may be convened in extra session pursuant to the act of 1900 (page 354) to assess the taxes thereon for ten years prior to 1899.

Wherefore he prays that they may be so convened and he will ever pray etc.

E. T. KING,
County Supervisor.

To Hon. M. R. Cooper, secretary of state. [SEAL.]

80 Plea of the Atlantic Coast Line Railroad Company.

Filed Jan. 19, 1903.

THE STATE OF SOUTH CAROLINA:

STATE BOARD OF RAILROAD ASSESSORS.

Ex Parte: E. T. KING, County Supervisor of Chesterfield County,
against
THE CHERAW AND DARLINGTON RAILROAD COMPANY.

Petition Praying that Board Convene and Assess for Taxes for Ten Years Prior to 1899 Property of the Cheraw & Darlington Railroad Company.

To the honorable the State board of railroad assessors:

The Atlantic Coast Line Railroad Company a corporation under the laws of the State of Virginia and doing business under the laws of the State of South Carolina in response to the notice of the secretary of the State board of railroad assessors gratefully acknowledges the favor extended to it by the decision of your honorable body of May 19th, 1900 directing your secretary to notify the parties interested in the subject matter of the petition of E. T. King, supervisor of the county of Chesterfield who prays that the board convene and assess taxes upon the property of the Cheraw and Darlington Railroad Company for ten years prior to 1899, under the act of 1900—G. S. P. 354, and by the decision of your honorable body that it will hear argument on the question on Tuesday June 12, 1900.

This respondent craves leave to avail itself of the privilege so granted to it to the extent of appearing before your honorable body for the purpose of respectfully presenting this its plea to the jurisdiction of the State board of railroad assessors in the case presented by said petition, and saving and reserving all its rights, notwithstanding such appearance and plea prays that this plea be filed and made part of the records of the State board of railroad
81 assessors.

1. The Atlantic Coast Line Railroad Company became on the 19th day of April 1900 the purchaser of the property of the Atlantic Coast Line Company of South Carolina, in which was included the railroad heretofore known as the Cheraw & Darlington extending *in* Florence in the county of Florence to Cheraw in the county of Chesterfield with the appurtenances of said railroad and all its rights, privileges and franchises.

2. The said Atlantic Coast Line Company of South Carolina had previously become the purchaser of the said railroad and property with its rights, franchises and privileges from the Cheraw and Darlington Railroad Company of South Carolina on the — day of July

A. D. 1898 *bona fide*, for value and with no knowledge of any right in the State or any of the municipal bodies thereof to assess taxes upon the said railroad property so purchased, and on the contrary with full notice of the exemption from taxes to which the said Cheraw and Darlington Railroad Company as owner of said property was and its successors in ownership were entitled by its charter and which it had enjoyed from the year 1863, also with notice that it had been in 1873 adjudged by the highest court to have and possess such exemption and also with the knowledge that the State of South Carolina has acknowledged such exemption before the year 1870 and had acquiesced in said adjudication from the year 1873 down to the year 1897.

3. The State of South Carolina has acknowledged such exemption and acquiesced in said adjudication down to the year — when it was voluntarily surrendered by the Atlantic Coast Line Railroad Company of South Carolina as part consideration of the charter of said last named company.

4. That with the exception of the attempts made by R. I. Humphreys as treasurer of Darlington county and John McCalla county treasurer for Chesterfield county in the year 1870 to assess the property of the Cheraw and Darlington Railroad Company for taxation, in which attempt the State of South Carolina joined, but which
82 attempt was enjoined in a judicial proceeding to which the State became voluntarily a party for the purpose of testing the right of the company to said exemption, no attempt has been at any time or in any year made by the State to assess or tax the said railroad property, nor has the said company been called upon in any year between 1873 and 1897 to make any return for taxes or to pay any taxes to the State or to its counties nor until after the passage of an act of assembly approved the 2nd day of March A. D. 1897, entitled "An act to provide for the collection of past due railroad taxes and for the distribution of the same"—which act was held by the supreme court of the State of South Carolina not to authorize the collection of taxes when there had been no assessment.

5. In the case above referred to of Thomas E. B. Pegues *vs.* R. I. Humphreys, treasurer for Darlington county, and John McCalla, treasurer for Chesterfield county, in which the question of the right of the Cheraw and Darlington Railroad Company to exemption from taxation by the State of South Carolina was squarely made between the company and the State and in which the State voluntarily submitted itself to the jurisdiction of the United States circuit court for the district of South Carolina and in which the right of the company to exemption from all taxation by the State or its counties was decided in the circuit court and on appeal by the Supreme Court of the United States affirming the judgment of the circuit court, an injunction against the officers of the State, in legal effect against the State of South Carolina, from attempting to assess or tax the property of said Cheraw and Darlington Railroad Company was issued, and afterwards was made perpetual and this respondent respectfully

prays that regard may be had by this honorable board to said decision and to said injunction and that this board will respect the said injunction and proceed no further upon the petition of the supervisor of Chesterfield county.

This respondent respectfully submits herewith certified copies of the orders of the said courts issuing said injunction and making the same perpetual, and of the mandate of the Supreme Court of
83 the United States affirming the same.

6. This respondent without waiving its objection to the juisdiction of your honorable board and saving and reserving its right to object thereto and all its rights in the premises respectfully submits, that the act of 1900, p. 354 referred to in the petition of the supervisor of Chesterfield county under which the action of this board is invoked, does not apply in its terms to the property of the Cheraw and Darlington Railroad Company inasmuch as:

(1.) The act in order to be consistent with the constitution must be construed as intended to provide for the future and cannot be made to apply to past transactions.

Its preamble, viz:

"And act to provide for the assessment for taxation of railroad property which has been off the tax books for the years in which they have been off the books and to fix the time when such taxes shall become due and for the collection thereof."

it is submitted, covers the case where hereafter, *i. e.*, after the passage of the act, any railroad property shall come to be dropped or "be off" from the tax books—and cannot constitutionally be construed to cover past transactions or to apply to property which has never been upon the tax books, and which has never come off the tax books, or in the words of the act "been off the books" for certain exceptional years.

(2.) The act must be held to apply only to "taxable property," and inasmuch as your honorable body finds that the amendment of its charter in the year 1863 granted to the Cheraw and Darlington Railroad Company exemption from taxation, that this grant has been adjudicated by the courts to be a contract binding upon the State and beyond the power of the legislature to repeal that this law has been acquiesced in and respected by the State and its successive tax officials and by every attorney general from 1863 to 1897, and that (excepting the attempt of the tax collectors of Darlington and Chesterfield counties in the year 1870 above referred to) the
84 property of said railroad company has never been upon the tax books, we respectfully submit that your honorable board is bound in law to presume and, until the contrary is shown judicially, to act on the legal presumption, that the property of the Cheraw and Darlington Railroad Company never has been and is not "taxable" property and therefore that the act of 1900 cannot and does not apply to it.

(3.) Respondent respectfully submits that only railroad property

upon the property, which was of the Cheraw and Darlington Railroad Company, ceased, it is

Ordered and decreed that the words in the order for injunction, viz: "year 1899" occurring after the words "prior to the" be erased and the words "eighteenth day of July 1898" be inserted in lieu thereof, it is further

Ordered that nothing in said decree contained shall be understood to enjoin the respondents or the taxing officers of the State of South Carolina from collecting by suit or otherwise any sum or sums of money which may be due or charged for taxes on said property of the Cheraw and Darlington Railroad Company after said eighteenth day of July 1898, at which date it was admitted in argument the exemption established in Pegues *vs.* Humphreys was surrendered.

NATHAN GOFF,
U. S. Circuit Judge.

July 31st, 1903.

111

Petition for Appeal.

Filed July 20, 1904.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

In re THOMAS E. B. PEGUES, a Citizen of Mississippi, Complainant,
vs.
R. I. HUMPHREYS, a Citizen of South Carolina, County Treasurer of Darlington County; John McCalla, a Citizen of South Carolina, Tax Collector for Chesterfield County, and The Cheraw and Darlington Railroad Company, a Citizen of South Carolina, Defendants.

Ex Parte: THE ATLANTIC COAST LINE RAILROAD COMPANY, a Citizen of Virginia,
vs.
G. DUNCAN BELLINGER, Attorney General of the State of South Carolina; Stevenson & Matheson, J. M. Spears, S. W. G. Shipp, I. P. Mangum, County Treasurer for Chesterfield County, South Carolina; W. H. Lawrence, County Treasurer for Darlington County, South Carolina, and J. O. McLendon, County Treasurer for Florence County, South Carolina, All of said Persons Except the Atlantic Coast Line Railroad Company Being Citizens of the State of South Carolina.

To the Honorable Nathan Goff, circuit judge of the aforesaid court:

The humble petition of U. X. Gunter, Jr., as successor of former Attorney General G. Duncan Bellinger; W. F. Stevenson, D. S.

Matheson, Stevenson & Matheson, J. M. Spears, and S. W. G. Shipp, as counsel employed by the State, showeth:

112 I. That by the decree, dated January 10th, 1903, in the above mentioned cause, and the further additional decree modifying same, dated July 31st, 1903, it was ordered that the temporary injunction theretofore granted, restraining them from prosecuting the action of the attorney general in the name of the State against the Atlantic Coast Line Railroad Company and the Cheraw and Darlington Railroad Company for back taxes on the property of said companies be made perpetual.

II. That the said orders dated as aforesaid, are, as your petitioners are advised and submit, erroneous, as set forth in the assignment of error herewith submitted, and the same ought to be reversed.

Your petitioners humbly pray, therefore, that they be allowed an appeal from the said decrees to the Supreme Court of the United States.

W. F. STEVENSON,
STEVENSON & MATHESON,
D. S. MATHESON,
J. M. SPEARS,
S. W. G. SHIPP,
U. X. GUNTER, JR.,
Attorney General of State of So. Ca.,
Petitioners.

113 Order Allowing Appeal.

Filed July 20, 1904.

Appeal allowed as prayed for. Bond in penalty of $2,000.00 conditioned as required by law.

NATHAN GOFF,
U. S. Circuit Judge.

July 16th, 1904.

114 Assignment of Errors.

Filed July 20, 1904.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

In re THOMAS E. B. PEGUES, a Citizen of Mississippi, Complainant,
vs.
R. I. HUMPHREYS, a Citizen of South Carolina, County Treasurer of Darlington County; John McCalla, a Citizen of South Carolina, Tax Collector for Chesterfield County, and The Cheraw and Darlington Railroad Company, a Citizen of South Carolina, Defendants.

Ex parte: THE ATLANTIC COAST LINE RAILROAD COMPANY, a Citizen of Virginia,
versus
G. DUNCAN BELLINGER, Attorney General of the State of South Carolina; Stevenson & Matheson, J. M. Spears, S. W. G. Shipp, I. P. Mangum, County Treasurer for Chesterfield County, South Carolina; W. H. Lawrence, County Treasurer for Darlington County, South Carolina, and J. O. McLendon, County Treasurer for Florence County, South Carolina, All of said Persons Except the Atlantic Coast Line Railroad Company Being Citizens of the State of South Carolina.

1. His honor, the circuit judge, having found that taxes for a part of the period embraced in the suit, to wit: from January 18th, 1898, to December 31st, 1898, were due and chargeable against the property of the Cheraw and Darlington Railroad Company, now owned by the petitioner, and were not stayed or affected by the originaldecree in Pegues *vs.* Humphreys, erred in granting any order restraining the prosecution of the action in the case of The State of South Carolina *vs.* The Atlantic Coast Line Railway Company, the prin-
115 ciple being that where any portion of the tax sued for is due the court of equity will not restrain an action at law for the recovery of same.

II. That under the admissions and proof before the circuit judge under any view of the case, taxes were due from July 18th, 1898, to December 31st, 1898, and embraced in the said action which was enjoined, and the said judge erred in restraining the State attorneys when it appeared that anything was due, the principle being that a court of equity will not restrain suit if anything is due unless it has been tendered.

III. The circuit judge erred in holding that the case of Pegues *vs.*

Humphreys and others was against all the tax officials of the State, when the record shows that it was only against the treasurers of Darlington and Chesterfield counties.

IV. The circuit judge erred in holding that the judgment of the court restraining the county treasurers from proceeding to collect the taxes was binding on the State of South Carolina, whereas he should have held that a State is never bound by a judgment against its agents or officials and can only be bound by the judgment of a court in a cause where it consents to submit its rights, and such consent can only be given by the legislature, and the court had no power under the Constitution of the United States to bind the State directly or indirectly.

V. The circuit judge erred in holding that all questions as to claim of an exemption, whether raised and litigated or not in the former case were concluded by the judgment therein; whereas he should have held that only such questions as were actually raised and litigated in the former suit are concluded in a subsequent suit for taxes for subsequent years, the same constituting a new cause of action.

116 VI. The said circuit judge erred in not holding that the case presented by the State was on a new and different state of facts from the case of Pegues *vs.* Humphreys, *et al.*, and on new causes of action, and between other parties, and new questions were raised, and that the State was in no wise bound as to such new questions and causes of action and such injunction against her attorneys was improperly granted, and bound the State contrary to, and in violation of, the statutes and Constitution of the United States.

VII. The said circuit judge erred in restraining the attorneys of the State from proceeding when no trespass upon or interference with the property of the petitioner was contemplated, and they were only proceeding in the courts to settle the rights of the parties in a judicial manner without interfering with the property of the petitioner in any way.

VIII. The circuit judge erred in holding that the Supreme Court of the United States alone could open and modify the decree of Pegues *vs.* Humphreys, when it is respectfully submitted that it was is no wise binding on the State and her attorneys and that there is no method open by which the said question can be brought to a hearing in the Supreme Court, except by appeal, and to enjoin the attorneys prevents that from being possible.

IX. The court erred in not holding that the admitted facts, that the decree in Pegues *vs.* Humphrey-, was based on the assumption that there was a consideration for the alleged contract between the State and the Cheraw and Darlington Railroad Company, to wit: the building of the road subsequent to the act of December, 19th, 1863, and that that was untrue and no such consideration existed made an entirely new case, and that under this state of facts the exemption, if any was granted, was only a gratuity and could be re-

voked and had been repealed by the constitution and laws of the State.

117 X. The said circuit judge erred in not holding that the terms used in the act of December, 1863, were not sufficient to confer an exemption from taxation on the Cheraw and Darlington Railroad Company, and that such was not conferred.

XI. The court erred in not holding that there was plain and adequate remedy at law, and there was no particular grounds for the interference of the court of equity.

XII. The court erred in enjoining the attorneys for the State, for the reason that it thereby, in effect, enjoined the State of South Carolina from proceeding in her cause, making this, in effect, a suit against the State, and it was without power to hear and determine the same.

XIII. The court was without power to proceed against these appellants, for the reason that they were acting purely for and as agents of the State, in whose behalf and interest the action sought to be stopped was being prosecuted, and the proceeding was, in effect, against the State and could not be maintained without its consent.

XIV. The court erred in that it, in effect, has enjoined the State from prosecuting its action for taxes in its own name, which said court has no power to do under the eleventh amendment to the Constitution of the United States, and under the Revised Statutes of the United States, section 720.

XV. The court erred in that it held the State bound by a decree in Pegues *vs.* Humphreys, *et al.*, to which the State was not a party, and in which the court would have been without jurisdiction and the decree a nullity if the State had been a party.

XVI. The court violated section 720 of the Revised Statutes of the United States, prohibiting United States courts from enjoining proceedings in State courts, and it thereby erred.

118 XVII. The court erred in holding that the State can be bound by a decree against one of its tax officials when it could not be bound by a decree against itself unless by legislative action it submitted itself to the jurisdiction; and the said court had no power to make such decree binding on the State in this way under the Constitution and laws of the United States.

U. X GUNTER, JR.,
Attorney General of State of So. Ca.,
W. F. STEVENSON,
STEVENSON & MATHESON,
S. W. G. SHIPP,
J. M. SPEARS,
Appellants' Attorneys.

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Appeal Bond and Approval.

Filed July 20, 1904.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

In re THOMAS E. B. PEGUES, a Citizen of Mississippi, Complainant,
vs.
R. I. HUMPHREYS, a Citizen of South Carolina, County Treasurer of Darlington County; John McCalla, a Citizen of South Carolina, Tax Collector for Chesterfield County, and The Cheraw and Darlington Railroad Company, a Citizen of South Carolina, Defendants.

Ex Parte: THE ATLANTIC COAST LINE RAILROAD COMPANY, a Citizen of Virginia,
vs.
G. DUNCAN BELLINGER, Attorney General of the State of South Carolina; Stevenson & Matheson, J. M. Spears, S. W. G. Shipp, I. P. Mangum, County Treasurer of Chesterfield County, South Carolina; W. H. Lawrence, County Treasurer for Darlington County, South Carolina, and J. O. McLendon, County Treasurer for Florence County, South Carolina, All of said Persons Except the Atlantic Coast Line Railroad Company Being Citizens of the State of South Carolina.

Know all men by these presents that we U. X. Gunter, Jr., attorney general of the State of South Carolina, W. F. Stevenson, and D. S. Matheson, individually and as co-partners practicing law under the firm name of Stevenson & Matheson; J. M. Spears, S. W. G. Shipp and the American Bonding Company of Baltimore, Maryland, a corporation organized and existing under the laws of the State of Maryland, are held and firmly bound unto the Atlantic Coast Line Railroad Company, a corporation organized and existing
120 under the laws of the State of Virginia; I. P. Mangum, county treasurer for Chesterfield county; South Carolina; W. H. Lawrence, county treasurer for Darlington county, South Carolina, and J. O. McLendon, county treasurer for Florence county, South Carolina, in the full and just sum of two thousand ($2,000.) dollars, to be paid to the said Atlantic Coast Line Railroad Company, its certain successors, attorneys, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, and by these presents.

Sealed with our seals, and dated this — day of June, in the year of our Lord one thousand nine hundred and four.

Whereas lately, on the 31st day of July, 1903, in a suit depending in the circuit court of the fourth circuit of the United States for the district of South Carolina, between Thomas E. B. Pegues, a citizen of Mississippi, plaintiff, and R. I. Humphreys, a citizen of South Carolina, county treasurer of Darlington county, South Carolina; John McCalla, a citizen of South Carolina, tax collector for Chesterfield county, South Carolina, and The Cheraw and Darlington Railroad Company, a citizen of South Carolina, defendants, on the petition of the Atlantic Coast Line Railroad Company, a citizen of Virginia, a decree was rendered against G. Duncan Bellinger, attorney general of the State of South Carolina, Stevenson & Matheson, J. M. Spears, S. W. G. Shipp, I. P. Mangum, county treasurer for Chesterfield county, South Carolina; W. H. Lawrence, county treasurer for Darlington county, South Carolina; and J. O. McLendon, county treasurer for Florence county, South Carolina, continuing and injunction theretofore granted against them, the said G. Duncan Bellinger, attorney general of the State of South Carolina, Stevenson & Matheson, J. M. Spears, S. W. G. Shipp, I. P. Mangum, W. H. Lawrence and J. O. McLendon aforesaid, and the said W. F. Ste-
121 venson and D. S. Matheson, Stevenson & Matheson, J. M. Spears, S. W. G. Shipp, and U. X. Gunter, Jr., successor of G. Duncan Bellinger, formerly attorney general of the State of South Carolina, having been allowed an appeal to the Supreme Court of the United States from said decree to reverse the decree in the aforesaid suit, and a citation having been issued to the said Atlantic Coast Line Railroad Company, I. P. Mangum, county treasurer for Chesterfield county, South Carolina; W. H. Lawrence, county treasurer for Darlington county, South Carolina; and J. O. McLendon, county treasurer for Florence county, South Carolina, citing and admonishing *him* to be and appear at the term of the Supreme Court of the United States, to be holden at Washington, on the first Monday of —— next.

Now the condition of the above obligation is such that if the said U. X. Gunter, Jr., attorney general of the State of South Carolina, W. F. Stevenson, D. S. Matheson, Stevenson & Matheson, J. M. Spears, and S. W. G. Shipp shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

W. F. STEVENSON. [L. S.]
STEVENSON & MATHESON. [L. S.]
D. S. MATHESON. [L. S.]
J. MONROE SPEARS. [L. S.]
S. W. G. SHIPP. [L. S.]
U. X. GUNTER, JR., [L. S.]
Attorney General, S. C.

AMERICAN BONDING COMPANY
OF BALTIMORE,
By T. MOULTRIE MORDECAI, [SEAL.]
Attorney in Fact.

Signed, sealed and delivered in the presence of—
Test as to W. F. Stevenson, Stevenson & Matheson, D. S. Matheson :
H. M. DUVALL.

Witness as to J. M. Spears:
E. C. DENNIS.

Witness as to S. W. G. Shipp :
W. M. STEVENSON.

Witness as to U. X. Gunter, Jr. :
W. H. TOWNSEND.

Witness as to A. B. Co. :
K. A. GRACE.

122 STATE OF SOUTH CAROLINA, }
Charleston County. }

Before me the subscribing notary public, personally appeared K. A. Grace and made oath that she saw the corporate seal of American Bonding Company of Baltimore affixed to the within written bond, and that she also saw T. Moultrie Mordecai attorney in fact of said American Bonding Company of Baltimore sign the same, and that she also witnessed the execution and delivery thereof as the act and deed of said American Bonding Company of Baltimore.

K. A. GRACE.

Sworn to before me this 30th day of June, 1904.

WM. AUSTIN,
Notary Public, S. C.

Approved,

NATHAN GOFF,
U. S. Circuit Judge.

July 16, 1904.

case it was held by the State supreme court that the act could not authorize an assessment to be made in the proceedings brought in the court of common pleas to recover the taxes, and that the complaint must aver that defendant's property was assessed for taxation in the years for which the taxes are claimed.

101 As this fact could not be alleged, the suit brought by the attorney general was abandoned and no farther attempt, under that act, was made to claim or collect taxes from the Cheraw and Darlington Railroad Company or from its successor then holding its property.

On the 19th. February 1900 an act was passed entitled "An act to provide for the assessment for taxation of railroad property which has been off the tax books for the years in which they have been off the tax books and to fix the time when such taxes shall become due and for the collection thereof" Statutes of South Carolina vol. 22 p. 354.

It was enacted by section 1 "that when railroad property has not been returned for taxation nor assessed for any years and *were* not put on the tax books for such year or years, and no taxes were paid thereon, and more than a year has elapsed since taxes for such years, if assessed at the proper time, would have been due, the said taxes shall be assessed by the railroad board of assessors, which shall be convened in extra session by the secretary of state for such purpose on the petition of any county supervisor in whose county such railway may be."

Section 2 provides that the said board should "fix the value of said road for each year in which it shall appear that said road has been off the books, separately, and its valuation and the number of miles in each county shall be certified to the respective county auditors as the valuation of property is done when regularly returned and assessed."

Section 3 declares that said auditor "shall enter the said assessment each year separately in the tax books of his office for the respective years and charge the taxes on the assessments under levies for those years as if they had been assessed and levied at the usual time" and he "shall furnish a statement to the county treasurer showing the property taxed the value of the same and the amount due for each year separately."

Section 4 requires "that the treasurer shall immediately
102 demand the said taxes of the company in default or if he find the property in the control of another company demand shall be made of the company which he finds in the possession of the property."

Section 5 provided "that said taxes shall become due as soon as said demand is made, and, if they are not paid within sixty days from the demands made, there may be an action brought in the name of the State by the attorney general and such counsel as the counties interested may employ against the company in default and any company which may be in possession of the property which has

escaped taxation for the recovery of said taxes and suit may be brought for each year separately or for all the years consolidated."

Section 6, declared that "the assessment herein provided shall be limited to the period of ten years immediately preceding the restoration of the property to the tax books and no recovery shall be had for a longer period than ten years."

Under this act the board of railroad assessors on the 29 day of May 1900 were convened in extra session by the secretary of state for the purpose, as alleged, of assessing for taxation the property formerly of the Cheraw and Darlington Railroad Company and now in the control and possession of the Atlantic Coast Line Railroad Company on the ground that said railroad property was off the tax books and had not been returned or assessed for ten years previous to 1899.

Against the protest of the Atlantic Coast Line Railroad Company, successor to the Cheraw and Darlington Railroad Company, in whose ownership and control the said property, which had been of the Cheraw and Darlington Railroad Company, is now held, the said board ignoring the exemption granted to said company by its charter and the decision of the supreme court and the injunction of the circuit court of the United States above set forth, of which the said board has been duly notified, certified its valuation of said property and the number of miles in each county to the county auditors
103 of the counties of Chesterfield, Darlington and Florence respectively—whereupon the county auditor of each county named entered said valuations as "assessments" on the tax books in his office and charged the taxes on said "assessments" and furnished a certified statement to the county treasurer of his county, purporting to show the property taxed, the value of the same and the amount due for each year separately of the said ten years. Thereupon the treasurer of each of said counties demanded said taxes from the Atlantic Coast Line Railroad Company successor of the Cheraw and Darlington Railroad Company as the company in whose control and possession said property was found.

Said sums so demanded were not paid by the Atlantic Coast Line Railroad Company and thereupon on the 27th day of July, A. D. 1901 an action purporting to be under the provisions of said act was brought in the court of common pleas for Chesterfield county in the name of the State by the Honorable G. Duncan Bellinger, attorney general and his associates against said company for the sums alleged to be due for said taxes in said years aggregating the sum of twenty-nine thousand eight hundred and seventy-seven 57/100 dollars.

Thereupon on the first day of October 1901 the said Atlantic Coast Line Railroad Company appeared in the circuit court of the United States for the district of South Carolina and filed in the above entitled cause of "Thomas E. B. Pegues against the Cheraw and Darlington Railroad Company and R. J. Humphreys * * * county treasurer and John McCalla county treasurer" its petition, *in re* against the Honorable G. Duncan Bellinger attorney general in and

for the State of South Carolina, and counsel above named who are associated with him, and the respective treasurers of Darlington, Florence and Chesterfield counties, in which petition the matters of fact above set forth and the interest of the petitioner are alleged, also the matters of law connected therewith, and the petitioner, claiming its said property to be exempt in law from taxation by the said State in the years above named, prayed that it may be allowed the benefit and protection of said decrees of
104 this court and of the Supreme Court of the United States and due process to enforce obedience to the decrees of this court of 1870 and 1872, above referred to, against the above named county treasurers, as the present tax officials of the State, and the said G. Duncan Bellinger attorney general and the said Stevenson and Mattheson, J. M. Spears and S. W. G. Shipp, plaintiff's attorneys, requiring each of them to answer this petition, and also that it may have a writ of injunction issued from this court restraining the said tax officials and also the said attorney general and the said Stevenson and Matheson, J. M. Spears and S. W. G. Shipp plaintiff's attorneys from proceeding under said act of assembly and from prosecuting an action in the name of the State against your petitioner for the recovery of said amounts, claimed as taxes, and against each of the above named county treasurers, enjoining and restraining them and each of them and any and all other persons acting for or in the name of said State from collecting all such amounts, so claimed as taxes and any other amounts, which may be so claimed as taxes prior to the year 1899, in any method provided by law for the collection of taxes legally imposed.

And thereupon on the first day of October 1901 the circuit judge for the fourth circuit for the district of South Carolina issued the following order, viz:

Ordered for Injunction.

"On hearing the verified petition of the Atlantic Coast Line Railroad Company * * * it is ordered that until the further order of this court G. Duncan Bellinger attorney general of the State of South Carolina, W. F. Stevenson and D. S. Matheson, J. M. Spears and S. W. G. Shipp, plaintiff's attorneys, be and they are hereby enjoined from prosecuting, in the name of the State of South Carolina and as her attorney general and her attorneys, an action for the recovery of the sums of money mentioned in the petition and demanded as taxes or any part thereof from the Atlantic Coast Line Railroad Company, and are enjoined from carrying on such action against said company and against the property formerly of the Cheraw
105 and Darlington Railroad Company in the possession of the petitioner.

It is further ordered, that until the further order of this court J. F. Mangum county treasurer for Chesterfield county, South Carolina be and is hereby enjoined from collecting the sum of ten

thousand four hundred and sixty one 90/100 dollars, which — is alleged he has heretofore demanded from the agent of the Atlantic Coast Line Railroad Company at Cheraw, South Carolina, and any fractional part of said sum from the Atlantic Coast Line Railroad Company" * * * (the order contains the like injunction as to W. H. Lawrence county treasurer for Darlington county, South Carolina, and as to the sum alleged to be demanded by him for taxes in his county. A like injunction against J. O. McLendon county treasurer for Florence county, South Carolina, and proceeds as follows, viz:)

"It is further ordered, that the said G. Duncan Bellinger, W. F. Stevenson, D. S. Matheson, J. W. Spears, S. W. G. Shipp and the said J. P. Mangum the said W. H. Lawrence and the said J. O. McLendon do show cause before the circuit judge of this court at Charleston on the 15th day of October, A. D. 1901 at eleven o'clock forenoon why this injunction should not be made perpetual and that any return which may be made to this rule shall be served on the attorneys for the petitioner not less than three days prior to said day."

The order directs that the petition herein be filed and a copy thereof served upon the respondents above named, that petitioner enter into bond, and that *subpœna ad respondendum* do issue requiring respondents to answer the petition etc.

By order of October 15, the date for return was changed from 16th to 25th October 1901 on which last named day the Honorable Charles H. Simonton circuit judge for said district caused to be entered the following order, viz: * * *

"The attention of the circuit judge having been called to the fact that the firm of which he was a member appeared on the record in the case of Humphreys and Pegues, upon which the motion in this case is based, he has come to the conclusion that he ought
106 not to sit any further in the case, the hearing of the rule to show cause returnable this day is therefore postponed. Counsel are at liberty to fix any other day which may suit the convenience of any judge of this court to hear the motion. They will therefore if possible agree upon such a day or take any other steps which they may deem advisable."

Thereupon, counsel agreeing, application was made to me to hear the motion and afterwards on the 18th. and 19th. November 1901 the case was heard before me at Richmond, Va. upon the petition and certified records of the circuit court for the fourth circuit, district of South Carolina, and upon the return, answer, and plea of respondents and upon affidavits, and copies of the reports of attorney generals and proceedings of the General Assembly of said State.

Hearing the petition of the Atlantic Coast Line Railroad Company and the return, answer, and plea of the respondents to the rule to show cause and to the petition herein together with affidavits and other evidence and arguments of counsel for and against the prayer

of said petition, and upon inspection of the records of the circuit court of the fourth circuit for the district of South Carolina in the case entitled "Thomas E. B. Pegues, complainant, against H. J. Humphreys tax collector etc." (1870–1873), the court finds, that the questions, whether the property of the Cheraw and Darlington Railroad Company in South Carolina is entitled in law to exemption from taxation by the State of South Carolina, by virtue of the grant contained in its amended charter, and whether the State would impair the obligation of its said contract by taxing said property, were finally determined by the Supreme Court of the United States on appeal taken in said cause, entitled, "Humphreys tax collector etc. *et al.* against Pegues" reported in 16 Wallace *W.* S. Rep. 244, and that the issues therein determined are *res judicata*, and can
107 not be revived or their decision questioned in any other proceeding. That if there was to be any modification or reversal of the result heretofore reached it could only be made by the said Supreme Court.

Also, that the injunction ordered in said cause on the 17th. day of August A. D. 1870 by the circuit court of the fourth circuit for the district of South Carolina against the tax officials of said State, which was on the 27th. day of April, A. D. 1871 made perpetual, and, as such, was affirmed by the Supreme Court of the United States on the 10th. day of March, A. D. 1873, is binding upon the attorney general of said State and its tax officials of the present day their predecessors and successors in office and for all time, and upon all persons, claiming to exercise or enforce the taxing power of the State of South Carolina against the property of said Cheraw and Darlington Railroad Company; it is therefore,

Ordered adjudged and decreed, that the rule issued in this case be and the same is hereby made absolute and that respondents G. Duncan Bellinger, attorney general for the State of South Carolina; W. F. Stevenson, D. S. Matheson, Stevenson and Matheson; J. M. Spears; S. W. G. Shipp; J. P. Mangum, county treasurer for Chesterfield county, South Carolina; W. H. Lawrence, county treasurer for Darlington county, South Carolina; J. O. McLendon, county treasurer for Florence county, South Carolina, and all other persons whosoever, claiming or to claim to represent the State of South Carolina, or the taxing power thereof, are hereby enjoined and prohibited from proceeding in the action begun, in the name of said State, by G. Duncan Bellinger, as attorney general thereof and his associates the respondents above named, and from prosecuting any other action or proceeding whatsoever or any distraint of property for the collection of money from the petitioner The Atlantic Coast Line Railroad Company or its successors or assigns, upon the claim of taxes alleged to be due to the said State prior to the year 1899 by said company or by the Cheraw and Darlington Railroad
108 Company upon the property which is or was of the Cheraw and Darlington Railroad Company in said State, or, upon the claim of taxation prior to the year 1899 imposed by said State

upon said property in the possession and ownership of the Cheraw and Darlington Railroad Company or in the control or possession of the Atlantic Coast Line Railroad Company.

It is further ordered that the respondents herein shall pay the costs of this petition, and rule, of the return, answer and plea thereto, and of the hearing thereon.

It is further ordered that the petition, return and other papers in this proceeding or used at the hearing of the cause be filed with this decree in said circuit court at Charleston, S. C.,

NATHAN GOFF,
U. S. Circuit Judge.

Jan. 16, 1903.

109 Statement of Counsel as to the Expiration of the Term of Office of G. Duncan Bellinger and His Successor Assuming the Office in His Place.

Filed Aug. 18, 1903.

That subsequently to the filing of said decree the term of office of G. Duncan Bellinger, as attorney general for the State of South Carolina, expired, and U. X. Gunter, Jr., having been duly elected attorney general for said State, qualified and was commissioned and entered upon the discharge of the duties of said office as successor to the said G. Duncan Bellinger, on the 21st day of January, 1903.

Thereafter, on August the 8th, 1903, the Honorable Nathan Goff, United States circuit judge, filed the following order and decree, to wit:

110 Supplementary Decree.

Filed 8 August, 1903.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

In re THOMAS E. B. PEGUES, etc., Complainants,
vs.
R. J. HUMPHREYS ET AL., Defendants.

Ex Parte THE ATLANTIC COAST LINE RAILROAD COMPANY.

Attention of this court having been called to an interpretation put upon the decree of January 16th, 1903 in above cause by respondents' counsel in their assignment of errors for appeal, viz: that the decree enjoins suit by the respondents for the portion of the taxes for the year 1898 accruing after the eighteenth day of July 1898—the date when the claim for the exemption from taxation